



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240



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The Honorable Cynthia Lummis
Chairman
Subcommittee on Interior
Committee on Oversight and Government Reform
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Lummis:

Enclosed are responses to follow-up questions from the oversight hearing on modernizing the National Park Service concession program on July 23, 2015. These responses were prepared by the National Park Service.

Thank you for giving us the opportunity to respond to you on these matters.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

cc: The Honorable Brenda Lawrence, Ranking Minority Member
Subcommittee on Interior, Committee on Oversight and Government Reform

Enclosure

Questions from Rep. Lummis

Question 1: Please describe the process that the National Park Service (NPS) uses to consider the proposals collected for a prospectus and in selecting the winning proposal?

Answer: The NPS bases its award of concessions contracts on the detailed requirements in the National Park Service Concessions Management Improvement Act of 1998 (Chapter 1019 of title 54). Section 101913 specifically details the competitive selection process, the process for solicitation of proposals, the contents of a prospectus, the process for selecting the best proposal, the timing for notifying Congress of selection (if applicable), the preferential rights of renewal for concessions, the preferential rights to new or additional services, and exceptions to the requirements for competition.

The NPS uses the selection factors, defined in statute and regulation, to select the winning proposal. These factors include: (1) protection of resources; (2) ability to provide the visitor services at reasonable rates; (3) the offeror's experience in providing the services; (4) the offeror's financial ability to perform the contract requirements; and (5) the proposed franchise fee. In addition, secondary selection factors that are unique to each concession opportunity may also be taken into consideration.

The NPS implements these requirements through regulations promulgated in 2000 and appearing at 36 C.F.R. Part 51. Subpart C of Part 51 describes the process used by NPS to evaluate proposals.

The NPS assembles a panel of NPS employees and other subject matter experts to evaluate the proposals. The employees on these panels are experienced in different aspects of concession operations. A park representative will also be assigned to the panel as a technical advisor. The panel evaluates each proposal against the selection criteria on its own merits and in comparison to the other proposals and produces a score for the different criteria. The NPS awards the contract to the offeror that receives the highest cumulative score.

Question 2: Please provide any documents that detail this process, including but not limited to Director's Orders, rules, or guidance.

Answer: Please see attachments, which include:

- 36 C.F.R. Part 51;
- Chapter 4, "Contract Solicitation, Selection and Award," of the "NPS Reference Manual 48, Concessions Management"; and
- A document titled "Panel Evaluation Guidance and Process," which is the current version of the panel guidelines. The "Panel Evaluation Guidance and Process" is considered a draft document that NPS revises and updates periodically to reflect new "best practices."

Questions from Rep. Norton

Question 1: In May, I introduced the National Mall Revitalization and Designation Act, which would require the Secretary of the Interior to submit a plan to Congress to enhance visitor enjoyment on the Mall. Both tourists and D.C. residents deserve a variety of quality food items and places to sit to enjoy the Mall when they visit. In September 2014, I hosted a roundtable discussion with representatives from the National Park Service (NPS) regarding the food options on the Mall, and the feasibility of food trucks in particular. In response, NPS promised me it would consider allowing food trucks to operate on the Mall after the current concessionaire's contract is up in 2015.

Ms. McDowall, to diversify and update the food options that are available, would you consider regulations to permit a minimum number of appropriate food trucks at the Mall approved by NPS?

Answer: Over the last several years, the National Mall and Memorial Parks has updated and diversified the food options on the Mall. The NPS is in the process of developing a new prospectus for the National Mall's food concession contract which will update, further diversify, and enhance the food options throughout the park. We will consider a range of food options to service visitors to the National Mall, including food trucks, while ensuring those options are consistent with applicable laws, rules, and regulations.

Ms. McDowall, in your written testimony, you describe a number of improvement projects in national parks around the country, including new facilities that have benefited visitors and enhanced their experience while visiting the parks. I have worked closely with the Trust for the National Mall and deeply appreciate its ongoing and long-term work to rehabilitate the Mall. The new grass that allows Americans to play games and sit on the grass is much appreciated. However, the Mall lacks tables, chairs, and benches in the shade for residents and tourists to sit and enjoy the Mall as a park environment, or even to eat the food they buy from the current concessionaire or bring on their own. Would you work with me on a public-private partnership in keeping with current federal and NPS regulations to place tables and chairs in shady spots on the Mall?

Answer: There are currently over 700 benches along the National Mall, Constitution Gardens, and surrounding the Tidal Basin, many of which are under shade during various parts of the day. The NPS is currently exploring options to provide additional tables and chairs to a variety of locations on the National Mall, and we will continue to work with your office on this issue.

Question 2: Last Congress, I introduced a bill to direct the Secretary of the Interior to conduct a resources study to determine the suitability and feasibility of entering into public-private partnerships to rehabilitate and operate NPS-owned golf courses in the District of Columbia—Langston Golf Course, Rock Creek Golf Course and East Potomac Golf Course. The courses have long been in desperate need of capital investment to reverse decades of deterioration and to maintain and preserve their historic features. From the time Congress created the first of the courses in the 1920s, they have been underfunded, and it would always be difficult for the government to keep golf courses in mint condition. The failure to invest is because the courses are operated under concession contracts even though these contracts do not allow for the significant annual capital improvements necessary for golf courses. The concessions approach to operate golf courses has led to an inevitable decline in quality. The three courses together constitute a magnificent but underutilized public asset that could be renovated and modernized, facilitating affordable recreation, attracting significantly more golfers and generating revenue for the government to maintain the courses.

Ms. McDowall, even the concessionaires at the hearing testified that the current process for undertaking capital improvements “is confusing and difficult to administer,” inflexible, and disincentives capital investment on part of concessionaires. Would you agree to work with our office, the District of Columbia government, and the private sector in discussions concerning a public-private partnership to upgrade these three golf courses?

Answer: The NPS is actively engaged in exploring options for the future of the NPS-administered golf courses in the District of Columbia. On July 16, 2015, NPS Superintendents from Rock Creek Park, National Capital Parks – East, and the National Mall and Memorial Parks met with the Mayor’s office and the Federal City Council to discuss a variety of management options for the courses, including leasing and public-private partnerships. The NPS will continue to work with these groups and your office to find the best management option for the golf courses.

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either temporarily or permanently psychologically or mentally impaired to a degree that the person is gravely disabled or that presents a clear danger to that person or another, may take such person into protective custody. An authorized person taking protective custody action pursuant to this paragraph shall deliver the person to the care of the Mariposa County Mental Health Authorities for an initial 72-hour evaluation in accordance with applicable provisions of the California Welfare and Institutions Code.

(c) An authorized person may take into protective custody any juvenile found within the administrative site who is deemed to be a runaway according to applicable provisions of the California Welfare and Institutions Code. An authorized person taking protective custody action pursuant to this paragraph shall deliver the juvenile to the care and custody of the Mariposa County Sheriff's Office.

§ 34.10 Saddle and pack animals.

The use of saddle and pack animals is prohibited without a permit from the Superintendent.

§ 34.11 Boating operations.

The launching or operation of a motor boat is prohibited.

§ 34.12 Information collection.

The information collection requirements contained in §§ 34.6, 34.8 and 34.10 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1024-0026. This information is being collected to solicit information necessary for the Superintendent to issue permits and other benefits, and to gather information. This information will be used to grant administrative benefits. The obligation to respond is required to obtain a benefit.

PART 51—CONCESSION CONTRACTS

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Sec.

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meaning of 41 U.S.C. 601 *et seq.* (the Contract Disputes Act) and are not service or procurement contracts within the meaning of statutes, regulations or policies that apply only to federal service contracts or other types of federal procurement actions. Concession contracts will contain such terms and conditions as are required by this part or law and as are otherwise appropriate in furtherance of the purposes of this part and the 1998 Act.

A *concessioner* is an individual, corporation, or other legally recognized entity that duly holds a concession contract.

Director means the Director of the National Park Service (acting on behalf of the Secretary), or an authorized representative of the Director, except where a particular official is specifically identified in this part. In circumstances where this part calls for an appeal to the Director, the appeal shall be considered by an official of higher authority than the official that made the disputed decision.

A *franchise fee* is the consideration paid to the Director by a concessioner for the privileges granted by a concession contract.

Offeror means an individual, corporation, or other legally recognized entity, including an existing concessioner, that submits a proposal for a concession contract. If the entity that is to be the concessioner is not formally in existence as of the time of submission of a proposal, a proposal must demonstrate that the individuals or organizations that intend to establish the entity that will become the concessioner have the ability and are legally obliged to cause the entity to be a qualified person as defined in this part. In addition, if the entity that will be the concessioner is not established at the time of submission of a proposal, the proposal must contain assurances satisfactory to the Director that the entity that will be the concessioner will be a qualified person as of the date of the award of the contract and otherwise have the ability to carry out the commitments made in the proposal.

Possessory interest means an interest in real property improvements as defined by the 1965 Act obtained by a concessioner under a possessory interest

concession contract. Possessory interest, for the purposes of this part, does not include any interest in property in which no possessory interest, as defined by the 1965 Act, exists.

A *possessory interest concession contract* means a 1965 Act concession contract that provides the concessioner a possessory interest.

A *preferred offeror* is a concessioner that the Director determines is eligible to exercise a right of preference to the award of a qualified concession contract in accordance with this part.

A *qualified concession contract* is a new concession contract that the Director determines to be a qualified concession contract for right of preference purposes.

A *qualified person* is an individual, corporation or other legally recognized entity that the Director determines has the experience and financial ability to satisfactorily carry out the terms of a concession contract. This experience and financial ability includes, but is not limited to, the ability to protect and preserve the resources of the park area and the ability to provide satisfactory visitor services at reasonable rates to the public.

A *responsive proposal* means a timely submitted proposal that is determined by the Director as agreeing to all of the minimum requirements of the proposed concession contract and prospectus and as having provided the information required by the prospectus.

A *right of preference* is the preferential right of renewal set forth in Section 403(7)(C) of the 1998 Act which requires the Director to allow a preferred offeror the opportunity to match the terms and conditions of a competing responsive proposal that the Director has determined to be the best proposal for a qualified concession contract. A right of preference does not provide any rights of any nature to establish or negotiate the terms and conditions of a concession contract to which a right of preference may apply.

Visitor services means accommodations, facilities and services determined by the Director as necessary and appropriate for public use and enjoyment of a park area provided to park area visitors for a fee or charge by a person other than the Director. The fee

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contract for the three most recent years; merchandise inventories of the current concessioner for the three most recent years; and the depreciable fixed assets and net depreciable fixed assets of the current concessioner; and

(g) Identification of a preferred offeror for a qualified concession contract, if any, and, if a preferred offeror exists, a description of a right of preference to the award of the concession contract.

§51.6 Will a concession contract be developed for a particular potential offeror?

The terms and conditions of a concession contract must represent the requirements of the Director in accordance with the purposes of this part and must not be developed to accommodate the capabilities or limitations of any potential offeror. The Director must not provide a current concessioner or other person any information as to the content of a proposed or issued prospectus that is not available to the general public.

§51.7 How will information be provided to a potential offeror after the prospectus is issued?

Material information directly related to the prospectus and the concession contract (except when otherwise publicly available) that the Director provides to any potential offeror prior to the submission of proposals must be made available to all persons who have requested a copy of the prospectus.

§51.8 Where will the Director publish the notice of availability of the prospectus?

The Director will publish notice of the availability of the prospectus at least once in the Commerce Business Daily or in a similar publication if the Commerce Business Daily ceases to be published. The Director may also publish notices, if determined appropriate by the Director, electronically or in local or national newspapers or trade magazines.

§51.9 How do I get a copy of the prospectus?

The Director will make the prospectus available upon request to all interested persons. The Director may charge a reasonable fee for a pro-

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spectus, not to exceed printing, binding and mailing costs.

§51.10 How long will I have to submit my proposal?

The Director will allow an appropriate period for submission of proposals that is not less than 60 days unless the Director determines that a shorter time is appropriate in the circumstances of a particular solicitation. Proposals that are not timely submitted will not be considered by the Director.

§51.11 May the Director amend, extend, or cancel a prospectus or solicitation?

The Director may amend a prospectus and/or extend the submission date prior to the proposal due date. The Director may cancel a solicitation at any time prior to award of the concession contract if the Director determines in his discretion that this action is appropriate in the public interest. No offeror or other person will obtain compensable or other legal rights as a result of an amended, extended, canceled or resolicited solicitation for a concession contract.

§51.12 Are there any other additional procedures that I must follow to apply for a concession contract?

The Director may specify in a prospectus additional solicitation and/or selection procedures consistent with the requirements of this part in the interest of enhancing competition. Such additional procedures may include, but are not limited to, issuance of a two-phased prospectus—a qualifications phase and a proposal phase. The Director will incorporate simplified administrative requirements and procedures in prospectuses for concession contracts that the Director considers are likely to be awarded to a sole proprietorship or are likely to have annual gross receipts of less than \$100,000. Such simplified requirements and procedures may include, as appropriate and without limitation, a reduced application package, a shorter proposal submission period, and a reduction of proposal information requirements.

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(2) The responsiveness of the proposal to the objectives, as described in the prospectus, of providing necessary and appropriate visitor services at reasonable rates;

(3) The experience and related background of the offeror, including the past performance and expertise of the offeror in providing the same or similar visitor services as those to be provided under the concession contract;

(4) The financial capability of the offeror to carry out its proposal; and

(5) The amount of the proposed minimum franchise fee, if any, and/or other forms of financial consideration to the Director. However, consideration of revenue to the United States will be subordinate to the objectives of protecting, conserving, and preserving resources of the park area and of providing necessary and appropriate visitor services to the public at reasonable rates.

(b) The secondary selection factors are:

(1) The quality of the offeror's proposal to conduct its operations in a manner that furthers the protection, conservation and preservation of park area and other resources through environmental management programs and activities, including, without limitation, energy conservation, waste reduction, and recycling. A prospectus may exclude this secondary factor if the prospectus solicits proposals for a concession contract that is anticipated to have annual gross receipts of less than \$100,000 and the activities that will be conducted under the contract are determined by the Director as likely to have only limited impacts on the resources of the park area; and

(2) Any other selection factors the Director may adopt in furtherance of the purposes of this part, including where appropriate and otherwise permitted by law, the extent to which a proposal calls for the employment of Indians (including Native Alaskans) and/or involvement of businesses owned by Indians, Indian tribes, Native Alaskans, or minority or women-owned businesses in operations under the proposed concession contract.

(c) A prospectus may include subfactors under each of the principal and

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secondary factors to describe specific elements of the selection factor.

§51.18 When must the Director reject a proposal?

The Director must reject any proposal received, regardless of the franchise fee offered, if the Director makes any of the following determinations: the offeror is not a qualified person as defined in this part; The offeror is not likely to provide satisfactory service; the proposal is not a responsive proposal as defined in this part; or, the proposal is not responsive to the objectives of protecting and preserving the resources of the park area and of providing necessary and appropriate services to the public at reasonable rates.

§51.19 Must the Director award the concession contract that is set forth in the prospectus?

Except for incorporating into the concession contract appropriate elements of the best proposal, the Director must not award a concession contract which materially amends or does not incorporate the terms and conditions of the concession contract as set forth in the prospectus.

§51.20 Does this part limit the authority of the Director?

Nothing in this part may be construed as limiting the authority of the Director at any time to determine whether to solicit or award a concession contract, to cancel a solicitation, or to terminate a concession contract in accordance with its terms.

§51.21 When must the selected offeror execute the concession contract?

The selected offeror must execute the concession contract promptly after selection of the best proposal and within the time established by the Director. If the selected offeror fails to execute the concession contract in this period, the Director may select another responsive proposal or may cancel the selection and resolicit the concession contract.

§51.22 When may the Director award the concession contract?

Before awarding a concession contract with anticipated annual gross receipts in excess of \$5,000,000 or of more

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considered and found infeasible. The Director must publish a notice of his intention to award a temporary concession contract to a specified person under this paragraph and the reasons for the proposed award in the FEDERAL REGISTER at least 60 days before the temporary concession contract is awarded. In addition, the Director must notify the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives of the proposed award of a temporary concession contract under this paragraph at least 60 days before the temporary concession contract is awarded. A temporary concession contract awarded under the authority of this paragraph will be considered as a contract extension for purposes of determining the existence of a preferred offeror under §51.44.

(c) A concessioner holding a temporary concession contract will not be eligible for a right of preference to a qualified concession contract which replaces a temporary contract unless the concessioner holding the temporary concession contract was determined or was eligible to be determined a preferred offeror under the extended concession contract that was replaced by the temporary concession contract under paragraph (b) of this section.

§51.25 Are there any other circumstances in which the Director may award a concession contract without public solicitation?

Notwithstanding the public solicitation requirements of this part, the Director may award a concession contract non-competitively to any qualified person if the Director determines both that such an award is otherwise consistent with the requirements of this part and that extraordinary circumstances exist under which compelling and equitable considerations require the award of the concession contract to a particular qualified person in the public interest. Indisputable equitable considerations must be the determinant of such circumstances. The Director must publish a notice of his intention to award a concession contract to a specified person under these circumstances and the reasons for the proposed award in the FEDERAL REG-

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ISTER at least 60 days before the concession contract is awarded. In addition, the Director also must notify the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives at least 60 days before the contract is awarded. The Director must personally approve any such award and may only do so with the prior written approval of the Secretary.

Subpart E—Right of Preference to a New Concession Contract

§51.26 What solicitation, selection and award procedures apply when a preferred offeror exists?

The solicitation, selection and award procedures described in this part will apply to the solicitation, selection and award of contracts for which a preferred offeror exists, except as modified by this subpart, subpart F and other sections of this part related to preferred offerors and/or a right of preference.

§51.27 Who is a preferred offeror and what are a preferred offeror's rights to the award of a new concession contract?

(a) A preferred offeror is a concessioner that the Director has determined is eligible to exercise a right of preference to the award of a qualified new concession contract in accordance with this part.

(b) A right of preference is the right of a preferred offeror, if it submits a responsive proposal for a qualified concession contract, to match in accordance with the requirements of this part the terms and conditions of a competing proposal that the Director has determined to be the best responsive proposal.

§51.28 When will the Director determine whether a concessioner is a preferred offeror?

Subject to §§51.46 and 51.47, the Director will determine whether a concessioner is a preferred offeror in accordance with this part no later than the date of issuance of a prospectus for the applicable new concession contract.

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(a) The concessioner was a satisfactory concessioner during the term of its concession contract as determined under this part;

(b) The applicable new contract is a qualified concession contract as determined under this part; and

(c) If applicable, the concessioner's previous concession contract was an outfitter and guide concession contract as determined under this part.

§ 51.37 How will the Director determine that a new concession contract is a qualified concession contract?

A new concession contract is a qualified concession contract if the Director determines that:

(a) The new concession contract provides for the continuation of the visitor services authorized under a previous concession contract. The visitor services to be continued under the new contract may be expanded or diminished in scope but, for purposes of a qualified concession contract, may not materially differ in nature and type from those authorized under the previous concession contract; and either

(b) The new concession contract that is to replace the previous concession contract is estimated to result in, as determined by the Director, annual gross receipts of less than \$500,000 in the first 12 months of its term; or

(c) The new concession contract is an outfitter and guide concession contract as described in this part.

§ 51.38 How will the Director determine that a concession contract is an outfitter and guide concession contract?

The Director will determine that a concession contract is an outfitter and guide concession contract if the Director determines that:

(a) The concession contract solely authorizes or requires (except for park area access purposes) the conduct of specialized outdoor recreation guide services in the backcountry of a park area; and

(b) The conduct of operations under the concession contract requires employment of specially trained and experienced guides to accompany park visitors who otherwise may not have the skills and equipment to engage in the

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activity and to provide a safe and enjoyable experience for these visitors.

§ 51.39 What are some examples of outfitter and guide concession contracts?

Outfitter and guide concession contracts may include, but are not limited to, concession contracts which solely authorize or require the guided conduct of river running, hunting (where otherwise lawful in a park area), fishing, horseback, camping, and mountaineering activities in the backcountry of a park area.

§ 51.40 What are some factors to be considered in determining that outfitter and guide operations are conducted in the backcountry?

Determinations as to whether outfitter and guide operations are conducted in the backcountry of a park area will be made on a park-by-park basis, taking into account the park area's particular geographic circumstances. Factors that generally may indicate that outfitter and guide operations are conducted in the backcountry of a park area include, without limitation, the fact that:

(a) The operations occur in areas remote from roads and developed areas;

(b) The operations are conducted within a designated natural area of a park area;

(c) The operations occur in areas where search and rescue support is not readily available; and

(d) All or a substantial portion of the operations occur in designated or proposed wilderness areas.

[65 FR 20668, Apr. 17, 2000; 65 FR 54155, Sept. 7, 2000]

§ 51.41 If the concession contract grants a compensable interest in real property improvements, will the Director find that the concession contract is an outfitter and guide concession contract?

The Director will find that a concession contract is not an outfitter and guide contract if the contract grants any compensable interest in real property improvements on lands owned by the United States within a park area.

evaluation. In the event the concessioner receives a second less than satisfactory annual evaluation (including, without limitation, one based on a shortened operations period), the prospectus must be amended to delete a right of preference or canceled and reissued without recognition of a right of preference to the new concession contract.

[65 FR 20668, Apr. 17, 2000; 65 FR 54155, Sept. 7, 2000]

§51.47 How does a person appeal a decision of the Director that a concessioner is or is not a preferred offeror?

(a) Except as stated in paragraph (b) of this section, any person may appeal to the Director a determination that a concessioner is or is not a preferred offeror for the purposes of a right of preference in renewal, including, without limitation, whether the applicable new concession contract is or is not a qualified concession contract as described in this part. This appeal must specify the grounds for the appeal and be received by the Director in writing no later than 30 days after the date of the determination. If applicable, the Director may extend the submission date for an appeal under this section upon request by the concessioner if the Director determines that good cause for an extension exists.

(b) The appeal provided by this section will not apply to determinations that a concessioner is not a preferred offeror as a consequence of two or more less than satisfactory annual evaluations as described in this part as the concessioner is given an opportunity to appeal those evaluations after they are made in accordance with applicable administrative guidelines.

(c) The Director must consider an appeal under this section personally or must authorize a Deputy Director or Associate Director to consider the appeal. The deciding official must prepare a written decision on the appeal, taking into account the content of the appeal, other written information available, and the requirements of this part. The written decision on the appeal must be issued by the date of selection of the best proposal submitted in response to a prospectus. If the ap-

peal results in a concessioner being determined a preferred offeror, then the concessioner will have a right of preference to the qualified concession contract as described in and subject to the conditions of this part, including, but not limited to, the obligation to submit a responsive proposal pursuant to the terms of the related prospectus. If the appeal results in a determination that a concessioner is not a preferred offeror, no right of preference will apply to the award of the related concession contract and the award will be made in accordance with the requirements of this part.

(d) No person will be considered as having exhausted administrative remedies with respect to a determination by the Director that a concessioner is or is not a preferred offeror until the Director issues a written decision in response to an appeal submitted pursuant to this section, or, where applicable, pursuant to an appeal provided by the administrative guidelines described in paragraph (b) of this section. The decision of the Director is final agency action.

§51.48 What happens to a right of preference in the event of termination of a concession contract for unsatisfactory performance or other breach?

Nothing in this part will limit the right of the Director to terminate a concession contract pursuant to its terms at any time for less than satisfactory performance or otherwise. If a concession contract is terminated for less than satisfactory performance or other breach, the terminated concessioner, even if otherwise qualified, will not be eligible to be a preferred offeror. The fact that the Director may not have terminated a concession contract for less than satisfactory performance or other breach will not limit the authority of the Director to determine that a concessioner did not operate satisfactorily on an overall basis during the term of a concession contract.

§51.49 May the Director grant a right of preference except in accordance with this part?

The Director may not grant a concessioner or any other person a right of

of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): building permits; materials, products and equipment used in construction; labor used in construction; security during construction; contractor's shack and temporary fencing; material storage facilities; power line installation and utility costs during construction; performance bonds; and contractor's (and subcontractor's) profit and overhead (including job supervision, worker's compensation insurance and fire, liability, and unemployment insurance).

Eligible indirect costs means, except as provided in the last sentence of this definition, the sum of all other incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project) necessary for the construction of a capital improvement. Eligible indirect costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): architectural and engineering fees for plans, plan checks; surveys to establish building lines and grades; environmental studies; if the project is financed, the points, fees or service charges and interest on construction loans; all risk insurance expenses and ad valorem taxes during construction. The actual capitalized administrative expenses (in amounts no higher than those prevailing in the locality of the project) of the concessioner for direct, on-site construction inspection are eligible indirect costs. Other administrative expenses of the concessioner are not eligible indirect costs.

Fixtures and non-removable equipment are manufactured items of personal property of independent form and utility necessary for the basic functioning of a structure that are affixed to and considered to be part of the structure such that title is with the Director as real property once installed. Fixtures and non-removable equipment do not include building materials (e.g., wall-board, flooring, concrete, cinder blocks, steel beams, studs, window frames, windows, rafters, roofing, framing, siding, lumber, insulation, wall-paper, paint, etc.). Because of their spe-

cial circumstances, floating docks (but not other types of floating property) constructed by a concessioner pursuant to the terms of a leasehold surrender interest concession contract are considered to be non-removable equipment for leasehold surrender interest purposes only. Except as otherwise indicated in this part, the term "fixture" as used in this part includes the term "non-removable equipment."

Leasehold surrender interest solely means a right to payment in accordance with this part for related capital improvements that a concessioner makes or provides within a park area on lands owned by the United States pursuant to this part and under the terms and conditions of an applicable concession contract. The existence of a leasehold surrender interest does not give the concessioner, or any other person, any right to conduct business in a park area, to utilize the related capital improvements, or to prevent the Director or another person from utilizing the related capital improvements. The existence of a leasehold surrender interest does not include any interest in the land on which the related capital improvements are located.

Leasehold surrender interest concession contract means a concession contract that provides for leasehold surrender interest in capital improvements.

Leasehold surrender interest value means the amount of compensation a concessioner is entitled to be paid for a leasehold surrender interest in capital improvements in accordance with this part. Unless otherwise provided by the terms of a leasehold surrender interest concession contract under the authority of section 405(a)(4) of the 1998 Act, leasehold surrender interest value in existing capital improvements is an amount equal to:

- (1) The initial construction cost of the related capital improvement;
- (2) Adjusted by (increased or decreased) the same percentage increase or decrease as the percentage increase or decrease in the Consumer Price Index from the date the Director approves the substantial completion of the construction of the related capital improvement to the date of payment of the leasehold surrender interest value;

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any change orders to a capital improvement project and to any additions to a structure or replacement of fixtures as described in this part.)

§51.55 What must a concessioner do after substantial completion of the capital improvement?

Upon substantial completion of the construction of a capital improvement in which the concessioner is to obtain a leasehold surrender interest, the concessioner must provide the Director a detailed construction report. The construction report must be supported by actual invoices of the capital improvement's construction cost together with, if requested by the Director, a written certification from a certified public accountant. The construction report must document, and any requested certification by the certified public accountant must certify, that all components of the construction cost were incurred and capitalized by the concessioner in accordance with GAAP, and that all components are eligible direct or indirect construction costs as defined in this part. Invoices for additional construction costs of elements of the project that were not completed as of the date of substantial completion may subsequently be submitted to the Director for inclusion in the project's construction cost.

§51.56 How will the construction cost for purposes of leasehold surrender interest value be determined?

After receiving the detailed construction report (and certification, if requested), from the concessioner, the Director will review the report, certification and other information as appropriate to determine that the reported construction cost is consistent with the construction cost approved by the Director in advance of the construction and that all costs included in the construction cost are eligible direct or indirect costs as defined in this part. The construction cost determined by the Director will be the final determination of construction cost for purposes of the leasehold surrender interest value in the related capital improvement unless the concessioner requests arbitration of the construction cost under §51.57. The Director may at any

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time review a construction cost determination (subject to arbitration under §51.57) if the Director has reason to believe that it was based on false, misleading or incomplete information.

[66 FR 35083, July 3, 2001]

§51.57 How does a concessioner request arbitration of the construction cost of a capital improvement?

If a concessioner requests arbitration of the construction cost of a capital improvement determined by the Director, the request must be made in writing to the Director within 3 months of the date of the Director's determination of construction cost under §51.56. The arbitration procedures are described in §51.51. The decision of the arbitration panel as to the construction cost of the capital improvement will be binding on the concessioner and the Director.

[66 FR 35083, July 3, 2001]

§51.58 What actions may or must the concessioner take with respect to a leasehold surrender interest?

The concessioner:

(a) May encumber a leasehold surrender interest in accordance with this part, but only for the purposes specified in this part;

(b) Where applicable, must transfer in accordance with this part its leasehold surrender interest in connection with any assignment, termination or expiration of the concession contract; and

(c) May relinquish or waive a leasehold surrender interest.

§51.59 Will a leasehold surrender interest be extinguished by expiration or termination of a leasehold surrender interest concession contract or may it be taken for public use?

A leasehold surrender interest may not be extinguished by the expiration or termination of a concession contract and a leasehold surrender interest may not be taken for public use except on payment of just compensation. Payment of leasehold surrender interest value pursuant to this part will constitute the payment of just compensation for leasehold surrender interest

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prior decision as to the construction cost of capital improvements made by the Director or by an arbitration panel in accordance with this part are final and not subject to further arbitration.

[66 FR 35083, July 3, 2001]

§ 51.63 When a new concessioner pays a prior concessioner for a leasehold surrender interest, what is the leasehold surrender interest in the related capital improvements for purposes of a new concession contract?

A new leasehold surrender interest concession contract awarded to a new concessioner will require the new concessioner to pay the prior concessioner its leasehold surrender interest value in existing capital improvements as determined under § 51.62. The new concessioner upon payment will have a leasehold surrender interest in the related capital improvements on a unit-by-unit basis under the terms of the new leasehold surrender interest contract. Instead of initial construction cost, the initial value of such leasehold surrender interest will be the leasehold surrender interest value that the new concessioner was required to pay the prior concessioner.

§ 51.64 May the concessioner gain additional leasehold surrender interest by undertaking a major rehabilitation or adding to a structure in which the concessioner has a leasehold surrender interest?

A concessioner that, with the written approval of the Director, undertakes a major rehabilitation or adds a new structure (e.g., a new wing to an existing building or an extension of an existing sidewalk) to an existing structure in which the concessioner has a leasehold surrender interest, will increase its leasehold surrender interest in the related structure, effective as of the date of substantial completion of the major rehabilitation or new structure, by the construction cost of the major rehabilitation or new structure. The Consumer Price Index adjustment for leasehold surrender interest value purposes will apply to the construction cost as of the date of substantial completion of the major rehabilitation or new structure. Approvals for major rehabilitations and additions to struc-

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tures are subject to the same requirements and conditions applicable to new construction as described in this part.

§ 51.65 May the concessioner gain additional leasehold surrender interest by replacing a fixture in which the concessioner has a leasehold surrender interest?

A concessioner that replaces an existing fixture in which the concessioner has a leasehold surrender interest with a new fixture will increase its leasehold surrender interest by the amount of the construction cost of the replacement fixture less the construction cost of the replaced fixture.

§ 51.66 Under what conditions will a concessioner obtain a leasehold surrender interest in existing real property improvements in which no leasehold surrender interest exists?

(a) A concession contract may require the concessioner to replace fixtures in real property improvements in which there is no leasehold surrender interest (e.g., fixtures attached to an existing government facility assigned by the Director to the concessioner). A leasehold surrender interest will be obtained by the concessioner in such fixtures subject to the approval and determination of construction cost and other conditions contained in this part.

(b) A concession contract may require the concessioner to undertake a major rehabilitation of a structure in which there is no leasehold surrender interest (e.g., a government-constructed facility assigned to the concessioner). Upon substantial completion of the major rehabilitation, the concessioner will obtain a leasehold surrender interest in the structure. The initial construction cost of this leasehold surrender interest will be the construction cost of the major rehabilitation. Depreciation for purposes of leasehold surrender interest value will apply only to the rehabilitated components of the related structure.

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§ 51.71 What is the process to be followed if there is a dispute between the prior concessioner and the Director as to the value of possessory interest?

Unless other procedures are agreed to by the concessioner and the Director, in the event that a concessioner under a possessory interest concession contract is awarded a new concession contract and there is a dispute between the concessioner and the Director as to the value of such possessory interest, or, a dispute as to the allocation of an established overall possessory interest value on a unit by unit basis, the value and/or allocation will be established by arbitration in accordance with the terms and conditions of this part. The arbitration procedures are described in § 51.51.

§ 51.72 If a new concessioner is awarded the contract, what is the relationship between leasehold surrender interest and possessory interest?

If a new concessioner is awarded a leasehold surrender interest concession contract and is required to pay a prior concessioner for possessory interest in real property improvements, the new concessioner will have a leasehold surrender interest in the real property improvements under the terms of its new concession contract. The initial value of the leasehold surrender interest (instead of initial construction cost) will be the value of the possessory interest as of the expiration or other termination of the 1985 Act possessory interest concession contract. This leasehold surrender interest will apply even if the related possessory interest real property improvements are not capital improvements as defined in this part. In the event a new concessioner obtains a leasehold surrender interest in only a portion of a structure as a result of the acquisition of a possessory interest from a prior concessioner, depreciation for purposes of leasehold surrender interest value will apply only to the portion of the structure to which the possessory interest applied.

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Subpart I—Concession Contract Provisions

§ 51.73 What is the term of a concession contract?

A concession contract will generally be awarded for a term of 10 years or less unless the Director determines that the contract terms and conditions, including the required construction of capital improvements, warrant a longer term. It is the policy of the Director under these requirements that the term of concession contracts should be as short as is prudent, taking into account the financial requirements of the concession contract, resource protection and visitor needs, and other factors the Director may deem appropriate. In no event will a concession contract have a term of more than 20 years (unless extended in accordance with this part).

§ 51.74 When may a concession contract be terminated by the Director?

Concession contracts will contain appropriate provisions for suspension of operations under a concession contract and for termination of a concession contract by the Director for default, including, without limitation, unsatisfactory performance, or termination when necessary to achieve the purposes of the 1998 Act. The purposes of the 1998 Act include, but are not limited to, protecting, conserving, and preserving park area resources and providing necessary and appropriate visitor services in park areas.

§ 51.75 May the Director segment or split concession contracts?

The Director may not segment or otherwise split visitor services authorized or required under a single concession contract into separate concession contracts if the purpose of such action is to establish a concession contract with anticipated annual gross receipts of less than \$500,000.

§ 51.80 How will the Director establish franchise fees for multiple outfitter and guide concession contracts in the same park area?

If the Director awards more than one outfitter and guide concession contract that authorizes or requires the concessioners to provide the same or similar visitor services at the same approximate location or utilizing the same resource within a single park area, the Director will establish franchise fees for those concession contracts that are comparable. In establishing these comparable franchise fees, the Director will take into account, as appropriate, variations in the nature and type of visitor services authorized by particular concession contracts, including, but not limited to, length of the visitor experience, type of equipment utilized, relative expense levels, and other relevant factors. The terms and conditions of an existing concession contract will not be subject to modification or open to renegotiation by the Director because of the award of a new concession contract at the same approximate location or utilizing the same resource.

§ 51.81 May the Director include "special account" provisions in concession contracts?

(a) The Director may not include in concession contracts "special account" provisions, that is, contract provisions which require or authorize a concessioner to undertake with a specified percentage of the concessioner's gross receipts the construction of real property improvements, including, without limitation, capital improvements on park lands. The construction of capital improvements will be undertaken only pursuant to the leasehold surrender interest provisions of this part and the applicable concession contract.

(b) Concession contracts may contain provisions that require the concessioner to set aside a percentage of its gross receipts or other funds in a repair and maintenance reserve to be used at the direction of the Director solely for maintenance and repair of real property improvements located in park areas and utilized by the concessioner in its operations. Repair and maintenance reserve funds may not be ex-

pendent to construct real property improvements, including, without limitation, capital improvements. Repair and maintenance reserve provisions may not be included in concession contracts in lieu of a franchise fee, and funds from the reserves will be expended only for the repair and maintenance of real property improvements assigned to the concessioner by the Director for use in its operations.

(c) A concession contract must require the concessioner to maintain in good condition through a comprehensive repair and maintenance program all of the concessioner's personal property used in the performance of the concession contract and all real property improvements, including, without limitation, capital improvements, and government personal property, assigned to the concessioner by a concession contract.

§ 51.82 Are a concessioner's rates required to be reasonable and subject to approval by the Director?

(a) Concession contracts will permit the concessioner to set reasonable and appropriate rates and charges for visitor services provided to the public, subject to approval by the Director.

(b) Unless otherwise provided in a concession contract, the reasonableness of a concessioner's rates and charges to the public will be determined primarily by comparison with those rates and charges for facilities and services of comparable character under similar conditions, with due consideration of the following factors and other factors deemed relevant by the Director: Length of season; peakloads; average percentage of occupancy; accessibility; availability and costs of labor and materials; and types of patronage. Such rates and charges may not exceed the market rates and charges for comparable facilities, goods, and services, after taking these factors into consideration.

§ 51.83 Sale of Native Handicrafts.

(a) Where authorized by an applicable concession contract, concessioners are encouraged to sell authentic native handicrafts appropriately labeled or denoted as authentic that reflect the cultural, historical, and geographic

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contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise.

§51.85 What assignments require the approval of the Director?

The concessioner may not assign, sell, convey, grant, contract for, or otherwise transfer (such transactions collectively referred to as "assignments" for purposes of this part), without the prior written approval of the Director, any of the following:

- (a) Any concession contract;
- (b) Any rights to operate under or manage the performance of a concession contract as a subconcessioner or otherwise;
- (c) Any controlling interest in a concessioner or concession contract; or
- (d) Any leasehold surrender interest or possessory interest obtained under a concession contract.

§51.86 What encumbrances require the approval of the Director?

The concessioner may not encumber, pledge, mortgage or otherwise provide as a security interest for any purpose (such transactions collectively referred to as "encumbrances" for purposes of this part), without the prior written approval of the Director, any of the following:

- (a) Any concession contract;
- (b) Any rights to operate under or manage performance under a concession contract as a subconcessioner or otherwise;
- (c) Any controlling interest in a concessioner or concession contract; or
- (d) Any leasehold surrender interest or possessory interest obtained under a concession contract.

§51.87 Does the concessioner have an unconditional right to receive the Director's approval of an assignment or encumbrance?

No, approvals of assignments or encumbrances are subject to the following determinations by the Director:

- (a) That the purpose of a leasehold surrender interest or possessory interest encumbrance is either to finance the construction of capital improvements under the applicable concession contract in the applicable park area or to finance the purchase of the applicable concession contract. An encum-

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brance of a leasehold surrender interest or possessory interest may not be made for any other purpose, including, but not limited to, providing collateral for other debt of a concessioner, the parent of a concessioner, or an entity related to a concessioner;

(b) That the encumbrance does not purport to provide the creditor or assignee any rights beyond those provided by the applicable concession contract, including, but not limited to, any rights to conduct business in a park area except in strict accordance with the terms and conditions of the applicable concession contract;

(c) That the encumbrance does not purport to permit a creditor or assignee of a creditor, in the event of default or otherwise, to begin operations under the applicable concession contract or through a designated operator unless and until the Director determines that the proposed operator is a qualified person as defined in this part;

(d) That an assignment or encumbrance does not purport to assign or encumber assets that are not owned by the concessioner, including, without limitation, park area entrance, user day, or similar use allocations made by the Director;

(e) That the assignment is to a qualified person as defined in this part;

(f) That the assignment or encumbrance would not have an adverse impact on the protection, conservation or preservation of park resources;

(g) That the assignment or encumbrance would not have an adverse impact on the provision of necessary and appropriate facilities and services to visitors at reasonable rates and charges; and

(h) That the terms of the assignment or encumbrance are not likely, directly or indirectly, to reduce an existing or new concessioner's opportunity to earn a reasonable profit over the remaining term of the applicable concession contract, to affect adversely the quality of facilities and services provided by the concessioner, or result in a need for increased rates and charges to the public to maintain the quality of concession facilities and services.

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(c) Assumes amortization of any intangible assets assigned or encumbered as a result of the transaction over the remaining term of the concession contract unless the proforma contains a narrative description as to why such extended amortization period is consistent with an opportunity for reasonable profit over the remaining term of the concession contract.

§51.93 If the transaction includes more than one concession contract, how must required information be provided?

In circumstances of an assignment or encumbrance that includes more than one concession contract, the concessioner must provide the information described in this subpart on a contract by contract basis.

§51.94 What information will the Director consider when deciding to approve a transaction?

In deciding whether to approve an assignment or encumbrance, the Director will consider the proformas, all other information submitted by the concessioner, and other information available to the Director.

§51.95 Does the Director's approval of an assignment or encumbrance include any representations of any nature?

In approving an assignment or encumbrance, the Director has no duty to inform any person of any information the Director may have relating to the concession contract, the park area, or other matters relevant to the concession contract or the assignment or encumbrance. In addition, in approving an assignment or encumbrance, the Director makes no representations of any nature to any person about any matter, including, but not limited to, the value, allocation, or potential profitability of any concession contract or assets of a concessioner. No approval of an assignment or encumbrance may be construed as altering the terms and conditions of the applicable concession contract unless expressly so stated by the Director in writing.

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§51.96 May the Director amend or extend a concession contract for the purpose of facilitating a transaction?

The Director may not amend or extend a concession contract for the purpose of facilitating an assignment or encumbrance. The Director may not make commitments regarding rates to the public, contract extensions, concession contract terms and conditions, or any other matter, for the purpose of facilitating an assignment or encumbrance.

§51.97 May the Director open to renegotiation or modify the terms of a concession contract as a condition to the approval of a transaction?

The Director may not open to renegotiation or modify the terms and conditions of a concession contract as a condition to the approval of an assignment or encumbrance. The exception is if the Director determines that renegotiation or modification is required to avoid an adverse impact on the protection, conservation or preservation of the resources of a park area or an adverse impact on the provision of necessary and appropriate visitor services at reasonable rates and charges.

Subpart K—Information and Access to Information

§51.98 What records must the concessioner keep and what access does the Director have to records?

A concessioner (and any subconcessioner) must keep any records that the Director may require for the term of the concession contract and for five calendar years after the termination or expiration of the concession contract to enable the Director to determine that all terms of the concession contract are or were faithfully performed. The Director and any duly authorized representative of the Director must, for the purpose of audit and examination, have access to all pertinent records, books, documents, and papers of the concessioner, subconcessioner and any parent or affiliate of the concessioner (but with respect to parents

preference by operation of law, the Director will permit the concessioner to exercise a renewal preference for the contract subject to and in accordance with the otherwise applicable right of preference terms and conditions of this part, including, without limitation, the requirement for submission of a responsive proposal pursuant to the terms of an applicable prospectus. The Director, similarly, will permit any holder of a 1965 Act concession contract that a court of competent jurisdiction determines in a final order is entitled to a renewal preference, for any reason, to exercise a right of preference in accordance with the otherwise applicable requirements of this part, including, without limitation, the requirement for submission of a responsive proposal pursuant to the terms of an applicable prospectus.

§51.103 Severability.

A determination that any provision of this part is unlawful will not affect the validity of the remaining provisions.

Subpart M—Information Collection

§51.104 Have information collection procedures been followed?

(a) The Paperwork Reduction Act provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The information collection for submission of proposals in response to concession prospectuses contained in this part have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024-0125, extended through May 30, 2000. An information collection for proposed transfers of concession operations is covered by OMB Approval No. 1024-0126 effective through August 31, 2002.

(b) The public reporting burden for the collection of information for the purpose of preparing a proposal in response to a contract solicitation is estimated to average 480 hours per proposal for large authorizations and 240 hours per proposal for small authorizations. The public reporting burden for

the collection of information for the purpose of requesting approval of a sale or transfer of a concession operation is estimated to be 80 hours. Please send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Officer, National Park Service, 1849 C Street, Washington, DC 20240; and to the Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

(c) Additional reporting and record-keeping requirements were identified in subpart F regarding appeal of a preferred offeror determination, subpart G regarding leasehold surrender interest and in subpart K regarding record-keeping that are not covered under OMB approval. An emergency information collection request to cover these requirements has been prepared and submitted to OMB for approvals. These additional information collection requirements will not be implemented until OMB approves the emergency request. The Director will publish a FEDERAL REGISTER notice when OMB has approved these requirements.

PART 59—LAND AND WATER CONSERVATION FUND PROGRAM OF ASSISTANCE TO STATES; POST-COMPLETION COMPLIANCE RESPONSIBILITIES

Sec.

- 59.1 Applicability.
- 59.2 Information collection.
- 59.3 Conversion requirements.
- 59.4 Residency requirements.
- 59.5-59.6 [Reserved]

AUTHORITY: Sec. 6, L&WCF Act of 1965 as amended; Pub. L. 88-578; 78 Stat. 897; 16 U.S.C. 4801-4 *et seq.*

SOURCE: 51 FR 34184, Sept. 25, 1986, unless otherwise noted.

§59.1 Applicability.

These post-completion responsibilities apply to each area or facility for which Land and Water Conservation Fund (L&WCF) assistance is obtained, regardless of the extent of participation of the program in the assisted area

4. Contract Solicitation, Selection and Award

4.1 Contract Solicitation

With limited exceptions, the 1998 Act requires a competitive selection process. Prospectuses issued under the 1998 Act should market an attractive opportunity to induce third-party offerors to submit proposals for the new concession contract. As described in Chapter 3, the Service has developed standard processes for developing prospectuses. This chapter describes the processes for soliciting and evaluating proposals and awarding concession contracts. This chapter also provides guidance on processes related to noncompetitive contracts (such as temporary concession contracts and long-term, sole source concession contracts).

Policies Superseded by this Section

WASO Memorandum dated September 15, 2003, titled "Review and Approval Process for Washington Office Level Contracts"

4.1.1 Advertising

The 1998 Act requires the Service to advertise the availability of a prospectus publicly. The Service currently publishes all prospectuses on fedbizops.gov (<http://fedbizops.gov>), the system for notifying the public of business opportunities with the Federal government. The Service also should notify the incumbent concessioner directly and issue a press release. In all cases, the Service must post the prospectus on the Program's public website.

FedBizOpps.gov and Commercial Services Website

Regional Offices prepare and post prospectus information on fedbizops.gov. In addition to the fedbizops.gov announcement, Regional Offices must provide all prospectus documents and supporting information to the WASO Program office to post on the WASO Program's public website. The fedbizops.gov announcement must include a link to the Program's public website.

The announcement should include the following information:

- Date the prospectus will issue
- Date proposals are due
- Brief description of visitor services required in the contract
- Description of how interested parties may obtain a hard copy of the prospectus
- Information about downloading a copy of the prospectus from the Commercial Services website
- Regional Office point of contact to notify if someone downloads the prospectus to allow the Regional Office to keep an accurate record of who has obtained copies of the prospectus in the event that the Region needs to disseminate additional information to all interested parties.
- Site visit information including the point of contact

Other Publications

The Regional and Park Offices also may advertise the prospectus in local newspapers and the park's website. For larger operations, the Regional and Park Offices also should advertise the opportunity in trade magazines. The Regional and Park Offices should coordinate selecting appropriate publications for advertising

and respond to them along with other questions submitted before the applicable deadline. During the site visit, the Service representatives must reiterate the provision in the Proposal Instructions that parties may rely only on information the Service provides in writing.

Generally, the Service provides a printed overview (based only on information available in the prospectus) during the site visit. Immediately following the site visit, the Region Office must post the overview with the prospectus on the Program's website. Information released for the site visit should include park brochures, floor plans of significant Concession Facilities (e.g., main lodges but not necessarily every cabin), visitation data, area information and history, operational information, and current land assignment maps. Sometimes more than one site visit occurs and, in those cases, the Service should manage the site visits consistently and share identical data.

On the day of the site visit, park staff register participants and obtain correct contact information for all future correspondence related to the solicitation process. When the Service anticipates a large number of participants may attend, the notice of the site visit may include information on restricting the number of representatives for each interested party.

The Service may need to release information about site visit attendees in accordance with the Freedom of Information Act.

When site visits occur prior to the release of a prospectus, the Service may provide the following information in addition to general information about the park:

- Lists of the required and authorized services under the new concession contract
- Description of the existing services (e.g., number of lodging rooms, capacity of food and beverage outlets, current approved rates)
- Gross revenues for the previous three years
- Franchise fees (or special account payments) paid for the previous three years
- Whether the new contract will include a franchise fee or Repair and Maintenance Reserve (or both) but not the amounts of either
- Anticipated term of the new contract
- Whether a preferred offeror exists
- Required initial investment by the successful offeror including the types of expenses (e.g., personal property acquisition, working capital, cure of deferred maintenance) but not the Service estimates for those expenses
- Anticipated important dates including the release dates, due date for questions, and due date for proposals.

As with other site visits, the Service must post all information shared during a pre-release site visit on the Program's website.

Responsibilities

The Regional and Park Offices work together to coordinate the site visit. Occasionally, Regional Office staff may attend the site visit to assist Park staff with the event, especially when many attendees participate. Park staff should invite a representative of the incumbent concessioner to participate in the site visit. If some disruption may occur, Park staff should arrange for a law enforcement presence. For WASO-level contracts, the WASO project manager may assist the Regional Office and park staff with site visit logistics including attendance at the site visit.

4.1.3 Questions during the Solicitation Period

obtain the concurrence of the WASO Program Chief for extensions. Generally, the Office of the Solicitor need not review extensions.

Cancellation

The Region may cancel a solicitation at any time prior to the award of the concession contract when appropriate in the public interest. This may occur before the Service selects a concessioner or after selection but prior to award. For WASO level contracts, the Region must obtain approval of the cancellation from the WASO Program Chief. The Region must post notice of the cancellation on fedbizopps.gov and the WASO Program's website.

Process for WASO-level Contracts

- Regional Chief consults with WASO Program Manager and Branch Chief, Planning and Development
- Regional Chief submits draft request (including a briefing paper explaining the reasons for cancellation) to WASO Branch Chief, Planning and Development, to coordinate review by the WASO Program Chief and Washington Office of the Solicitor
- Regional Director submits formal request including the briefing paper
- WASO Program prepares approval memo and coordinates Office of the Solicitor review
- WASO Program transmits signed approval memo to the Regional Director and Regional Concession Chief
- Regional Chief completes process as described above

4.1.5 Amendments to and Clarification of Proposals by Offerors

Prior to the due date of proposals, an offeror may amend a submitted proposal by submitting such information to the point of contact identified on the inside cover of the prospectus (typically the Regional Chief).

Regulations at 36 C.F.R. § 51.15 have strict requirements for requesting and accepting additional information after the due date for proposals. Whenever the Regional Concession Chief considers requesting amendments or clarifications, he or she must consult with the Office of the Solicitor. For WASO-level contracts, the Regional Concession Chief must consult with the WASO Program (Program Chief and Branch Chief, Planning and Development) prior to transmitting a written request from the Regional Director to request and accept additional information after the due date. The WASO Program Chief may approve such request.

Process for WASO-level Contracts

- Regional Chief consults with WASO Program Manager and Branch Chief, Planning and Development
- Regional Chief submits draft request (including a briefing paper explaining the reasons to request or allow such information) to WASO Branch Chief, Planning and Development, to coordinate review by the WASO Program Chief and Washington Office of the Solicitor
- Regional Director submits formal request including the briefing paper
- WASO Program prepares approval memo and coordinates Office of the Solicitor review
- WASO Program transmits signed approval memo to the Regional Director and Regional Concession Chief
- Regional Chief completes process

4.2.3 Evaluation Panel Membership

Regional Directors convene evaluation panels with the expertise necessary to provide a credible analysis of the proposals reflecting the complexity of the operation and subject matter of the various selection factors.

Regional Chiefs should identify potential panel members early, often before issuing the prospectus. For complex and high revenue projects, Regional Chiefs should consider identifying a panel chair early enough to allow him or her to participate in the roundtable meeting to fully understand the reasoning that leads to the development of the proposal package. In addition, before contacting potential voting members, Regional Chiefs should contact supervisors for permission to contact the employees. For regional-level contracts, the Regional Director must approve the final panel members, preferably at least two weeks in advance of the submission deadline for proposals. For WASO-level contracts, the WASO Program Chief approves the panel membership. The Regional Director should provide recommendations for panel membership to the WASO Program Chief at least 4 weeks prior to the submission deadline for proposals.

Panels usually consist of voting members and non-voting technical advisors. Technical advisors typically include an attorney from the Office of the Solicitor, a park representative, and subject matter experts provided by a contractor. Technical experts from other Federal agencies may serve as a voting member or a non-voting technical advisor. Superintendents of parks with a concessioner who submits a proposal for the subject project may not serve on the panel. Park staff, including superintendents and other decision-makers from the affected park, may not serve as voting members although they may serve as technical advisors.

All panel members, including technical advisors, must sign a Conflict of Interest and Confidentiality Certificate (available through the WASO Program) as soon as they agree to participate in the panel. Panel members may not provide any information regarding the evaluation process, proposals, or results to any third party. The panel chair may provide such information only as directed by the deciding official.

Every panel must have a designated chairperson (panel chair) and at least one additional voting member. The number of proposals received will determine the number of panel members needed to complete the evaluation of the proposals timely.

Panel chair: The panel chair works with the Regional Chief to establish procedures for facilitating the evaluation process including how to manage the proposal documents, how the deliberations occur, and guidance on preparing the evaluation document. The panel chair collects evaluation information from the panel members and consolidates it into the panel evaluation for policy and legal review. On occasion, the Service may have co-chairs, either to develop the skills of less experienced panel chairs or for complex or highly competitive prospectuses to alleviate the work burden.

Voting panel members: Only current Federal employees may serve as voting panel members.

Technical advisors: Except for the attorney from the Office of the Solicitor, technical advisors need not be Federal employees. The Service frequently relies on consultants to provide financial and other technical expertise to assist in the evaluations when qualified Federal employees are unavailable. A park representative (usually from the park's commercial services program) provides information on the park and concession operations and prepares a PowerPoint presentation to introduce the park and aspects of the concession operations to the panel. Ideally, the park representative participates in person while presenting information about the park and concession operations and for answering questions while the panel reviews the proposals. The park representatives should leave the panel prior to the scoring discussions. For most panels, an attorney from the Office of the Solicitor should attend scoring discussions and respond to questions from the panel chair or Regional Chief. Other Federal employees, including other Regional and WASO staff, may observe the panel with the consent of the Regional Chief.

Process for WASO-level Contracts

- Regional Chief consults with WASO Program Manager and Branch Chief, Planning and Development) on candidates for panel membership

During the panel deliberations, the panel chair should collect drafts from panel members and provide feedback to enhance the quality and consistency of the evaluation. Panel members must comply with such feedback from the panel chair.

At the conclusion of the evaluation process, the panel chair collects all notes, electronic media, and other extraneous material used during the deliberations of the panel. The Regional Chief, in consultation with the Office of the Solicitor, will decide what information to retain for the administrative record to support the evaluation and what to destroy.

The panel chair generally completes the written panel evaluation within 30 days following the adjournment of the Panel. The Regional Chief reviews the evaluation for policy sufficiency and submits it for legal review to the appropriate level of the Office of the Solicitor. After legal review, the panel chair transmits the written evaluation through the Regional Chief to the Regional Director for a final decision on the selection. The proposals, final Panel evaluation documentation, legal review(s), and deciding official approval become part of the administrative record. As part of the formal submission to the Regional Director, the Regional Chief must describe any issues of responsiveness with any proposal and include a recommendation as to whether the Regional Director should find each proposal responsive or non-responsive.

When the Regional Office receives only one proposal in response to a prospectus, Regional Office staff may evaluate the proposal without convening formal meetings. All other procedures, including the preparation of a formal evaluation summary, must occur.

To reduce expenses, a Regional Chief may choose to conduct a panel remotely when the contract and prospectus are not complex. All other procedures, including the preparation of a formal evaluation summary, must occur. For more complex projects, the Regional Chief may convene a panel that works remotely for a few days and then meets to discuss the merits of the various proposals and assign narrative and numeric scores. Again, all other procedures must occur.

The Regional Director considers the recommendations of the panel when deciding which proposal to select. By regulation, the Service must select the responsive offer with the highest cumulative score. The Regional Director, however, may reject the panel's recommendation and individually review the proposals, assign different scores, and select an offeror based on his or her personal review and evaluation. The Regional Director must document and explain all such changes in a written decision. The Office of the Solicitor must conduct legal review of the Regional Director's reevaluation and conclusions. For WASO level contracts, when the Regional Director rejects a panel recommendation and personally reviews, evaluates, and scores the proposals, he or she must document such actions to the Associate Director, Business Services, prior to submitting the recommended selection for approval.

For WASO level contracts, the WASO Program and the Washington Office of the Solicitor review the written evaluation following the completion of the Regional policy and legal review. The Regional Concession Chief sends the written evaluation to the WASO Program for informal preliminary review and responds to comments from the WASO Program and the Washington Office of the Solicitor prior to the Regional Director submitting the document for formal review and approval.

Process for WASO-Level Contracts

- Regional Chief completes policy review and appropriate level of the Office of the Solicitor completes legal review of the evaluation
- Regional Chief submits the draft evaluation to the WASO program (Branch Chief, Planning and Development) for informal policy review and Washington level legal review
- Branch Chief, Planning and Development, provides policy and legal comments to the Regional Concession Chief
- Regional Chief incorporates feedback from the WASO policy and legal review and finalizes the document
- Regional Director submits the evaluation with a recommended selection for formal approval by the Associate Director, Business Services

- Regional Chief submits the draft evaluation including the factors considered by the Regional Director to break the tie to the WASO program (Branch Chief, Planning and Development) for informal policy review and to coordinate legal review at the Washington level
- Branch Chief, Planning and Development, provides policy and legal comments to the Regional Concession Chief
- Regional Chief incorporates feedback from the WASO Program informal review and finalizes the document
- Regional Director submits the evaluation with a recommended selection and explanation of the factors considered in breaking the tie for formal approval by the Associate Director, Business Services (through the WASO Program Chief)
- WASO Program prepares the approval memorandum, completes the formal policy review, and obtains formal legal review from the Office of the Solicitor
- WASO Program sends the approval memorandum to the Regional Director and Regional Concession Chief

4.2.7 Exercise of Right of Preference

Regulations at 36 C.F.R. Part 51 Subpart E explain the circumstances when an incumbent concessioner may have a right of preference to a new concession contract and the process the Service must follow. Specifically, when an incumbent with a right of preference submits a responsive proposal but does not receive the highest cumulative score, the Regional Director must make a written determination:

- That the proposal submitted by the incumbent preferred offeror was responsive as defined by the prospectus;
- That the proposal submitted by the offeror submitting the highest scoring proposal was responsive as defined by the prospectus;
- That the proposal submitted by the offeror submitting the highest scoring proposal was the best proposal submitted; and
- Identifying the better terms and conditions of the highest scoring proposal as compared to the proposal submitted by the incumbent preferred offeror.

Once the Regional Director has made these determinations, he or she must send a letter to the incumbent advising it as the preferred offeror:

- Of the better terms and conditions of the highest scoring proposal;
- That it may submit an amended proposal to match the better terms and conditions of the best offer; and
- The deadline by which the incumbent must submit the amended proposal.

Upon receipt of the amended proposal, the Regional Director must determine:

- Whether the incumbent preferred offeror submitted its amended proposal within the time period allowed by the Regional Director; and
- Whether the incumbent preferred offeror's amended proposal matches all the better terms and conditions of the highest scoring proposal.

If the Regional Director makes the above determinations in the positive, he or she will select the incumbent concessioner for the award of the new contract.

Process for WASO-Level Contracts

- Regional Chief completes policy review and appropriate representative of the Office of the Solicitor completes legal review of the determination of responsiveness and identification of the terms and conditions of the best proposal
- Regional Concession Chief submits the draft evaluation and the determination of responsiveness and identification of the terms of the best proposal to the WASO program (Branch Chief, Planning and Development) for informal policy and legal review at the Washington level

elapse. The Program will confirm expiration of the notice period at which time the Regional Director typically awards the contract as the Director generally delegates the award to the Regional Director.

In the event the selected offeror does not sign the contract, the Service may select another responsive proposal or may cancel the selection and re-solicit the concession contract. Consequently, the competitive process continues until the actual award of the concession contract. All information, including the content of the executed contract, must remain confidential until the Service awards the contract.

4.3.1 Final Contract Preparation and Award

The Regional Chief directs the process of preparing the contract to present to the successful offeror. This includes inserting specific information about the new concessioner in several locations in the contract itself (e.g., the paragraph identifying the concessioner, the paragraph with contact information for notices, and the signature blocks). The signature blocks of both parties (the new concessioner and the United States) should include the typed name of the individual signing for each entity.

The Regional Office works with park staff to identify the better elements of the selected proposal into the concession contract and exhibits. This process should begin during the panel process with the park technical representative, working with the Regional Chief, reviewing the proposals and making notes. The Regional Chief presents the identified better elements to the superintendent for discussions of what to include and how to include it. The Regional Office then works with park staff to incorporate the elements of the selected proposal into the concession contract and exhibits. Except for incorporating elements of the best proposal, the final contract may not materially amend or omit terms of the contract as published in the prospectus.

The Service does not need to incorporate any terms from the highest scoring proposal into the contract. Frequently, especially with smaller contracts, an offeror may not propose any practice or procedure that alters what the draft contract requires. The better practice, however, includes the incorporation of the terms that distinguished the highest scoring proposal from the others. The highest scoring proposal may include new practices or programs that have merit, but park staff may want more involvement in their development. In those cases, the contract should require the new concessioner to propose a plan for implementation subject to the further review and approval of the Service. The contract contemplates that the Service may change the terms of the operating plan and the maintenance plan in certain circumstances. The Service may use the opportunity to include items included in the highest scoring proposal in the future that were not included in the original document. When the Service desires to do this, the Regional Chief must consult with the appropriate Office of the Solicitor to develop the specific terms.

After the Regional Chief reviews the contract for policy purposes, the Office of the Solicitor reviews the documents for legal sufficiency. At this stage, the review documents should show tracked changes from the documents published as part of the prospectus and include notes identifying the location of the information in the proposal. Once approved by the Regional Director, the Regional Director transmits the contract to the successful offeror for execution including a copy of the documents that identify the sources of the inserted terms.

When the successful proposal provides no additional terms to incorporate into the contract, including exhibits, and when the contract does not change from the version published with the prospectus other than the insertion of identifying information about the new concessioner, the Regional Chief does not need to obtain additional legal review from the Office of the Solicitor. The Regional Chief, however, should work with the Office of the Solicitor to make sure the concessioner is correctly identified in the contract documents.

For WASO-level contracts, when the Regional Chief submits the contract to the Program for informal policy and legal review, the documents should show tracked changes to display the differences between the review documents and the documents published as part of the prospectus including notes identifying the location of the information in the proposal. After incorporating comments from this informal review, the Regional

Disclosure of Information

Disclosure of information related to aspects of the selection decision prior to contract award might adversely affect the contract award process. Even after contract award, undue disclosure of information concerning the selection decision and the contract award may adversely affect competition for other concession contracts and risk violation of law or agency regulation. For example, information submitted by offerors in response to a concession contract solicitation may contain commercial or financial information protected by applicable law from public disclosure. Consequently, the Service must carefully consider what to disclose when preparing any debriefing.

Providing a debriefing does not affect the ability of an entity to request documents relating to the solicitation and selection process under FOIA. The Service must process all FOIA requests in accordance with FOIA procedures with the assistance of the applicable FOIA officer.

Procedures

The standard proposal instructions provide information about the availability of pre- or post-award debriefings.

The Service responds only to written requests for debriefings and provides only written debriefings.

In general, the Regional Chiefs take the following steps:

- Retain copies of all written notices and correspondence from an offeror regarding a requested debriefing
- Prepare a written debriefing using the evaluation document as the source of information provided
- Retain copies of all debriefings

Debriefing Requests

Offerors may request either a pre- or post-award debriefing within 14 calendar days of receiving a Notification of Selection/Non-Selection letter. In special circumstances, the Service, in its discretion, may provide both a pre- or post-award debriefing.

The Service must consult with the Office of the Solicitor prior to finalizing any debriefing.

Examples of pre- and post-award debriefing letters are available from the WASO Program. The Regional Chief generally should follow the format provided in the examples for all debriefing letters.

Pre-award Debriefings

A pre-award debriefing occurs after selection of the best proposal but before the award of the concession contract. If an offeror submits a written request for a pre-award debriefing within 14 calendar days of receiving a Notification of Selection/Non-Selection letter, the Service will make every effort to debrief the offeror as soon as practicable after receipt of the request. Circumstances, however, may cause the Service to delay the debriefing until after the contract award. In such circumstance, the Service will provide a post-award debriefing in place of the pre-award debriefing. The Regional Chief must document the reason for the delay.

Content of Pre-Award Debriefings

Pre-award debriefings will include:

- A general comparison of the quality of the debriefed offeror's proposal to the selected proposal, without identifying the offeror of the selected proposal, based on the selection factors included in the applicable prospectus
- A description of the selection evaluation process.

4.4.1 Limitations of a Temporary Contract

The Service may award temporary contracts for a term **not to exceed** three years. The same requirements of a fully solicited long-term concession contract exist, including:

- The temporary contract must provide the concessioner a reasonable opportunity for a net profit considering the capital invested and obligations of the contract
- The concessioner awarded a temporary contract must be a qualified person, i.e., have the managerial experience and financial ability to carry out the terms of the contract satisfactorily

A concessioner cannot obtain a right of preference under a temporary contract.

4.4.2 Steps for Awarding a Temporary Contract

Only the Director, Deputy Director, or Associate Director, Business Services, may approve the award of a temporary concession contract, including both the contents of the contract (including its exhibits) and the entity that will become the temporary concessioner. Generally, the Service must publish a notice of its intent to award a temporary contract at least 30 days prior to the award of the contract.

The Regional Chief should consult with the WASO program as soon as she or he recognizes a situation when the Service likely will need to use a temporary contract to avoid the interruption of visitor services. This particularly is important to enable the Service to publish the Federal Register notice timely.

The ability to award a temporary concession contract requires three distinct approvals. The first is the authority to use a temporary contract, the second is the selected concessioner, and the third is the content of the temporary contract. Frequently, all three approvals occur simultaneously.

The only justification for awarding a temporary contract is to avoid an interruption of visitor services. Consequently, the request to approve such use must include a discussion of the other alternatives considered to avoid any interruption of visitor services (e.g., sale and transfer of an existing contract to another qualified person, issuance of a commercial use authorization, issuance of a prospectus for a long-term contract). Such request also must include a financial analysis demonstrating the temporary contract provides a reasonable opportunity for a net profit considering the capital invested and obligations of the contract. When seeking approval of a potential concessioner, the request must describe the qualifications including financial ability of the recommended concessioner. If the Regional Chief has not yet identified the qualified person to serve as the concessioner, the request must state that the Regional Director in the future will identify that individual or entity and submit the recommended selection for approval with the determination that it is a qualified person per 36 C.F.R. §51.3. Finally, if the Regional Director seeks a waiver of the requirement to publish the Federal Register notice because of an emergency situation, the request must explain the basis for this request. The Regional Director must send the recommendation through the Program Chief to the Associate Director, Business Services. In addition to the request for approval, the Regional Director must submit the contract documents proposed for use and the record of decision and determination to award. Typically, the only legal review of a temporary contract occurs at the Washington level.

After the Associate Director, Business Services approves the temporary contract and selection of the temporary concessioner, the Regional Chief sends the contract to the future concessioner to discuss the terms of the contract including its exhibits. For the most part, the Regional Chief should avoid discussing revisions to the standard contract language but may agree to changes in operating and maintenance plans. The Regional Director must submit any changes in standard contract language and *substantive* changes to operating and maintenance requirements for additional approval by the Associate Director, Business Services.

Even though the use of a temporary contract allows awarding the contract without competition, on occasion the Regional Chief may want to solicit interest in the opportunity. The Regional Director must first seek and obtain the approval of the Associate Director, Business Services, to enter into a temporary contract. After that, the Regional Chief prepares a Request for Qualifications (RFQ) seeking information from potential

- Regional Chief submits to the WASO program for informal policy and legal review, a draft request memorandum, a briefing paper explaining the justification for a long-term sole source contract following the statutory requirements
- WASO Program reviews the drafts, obtains informal legal review, and sends comments to the Regional Chief
- Regional Director formally requests approval to award the contract including the briefing statement and the contract documents reflecting WASO comments
- WASO Program prepares approval memorandum, obtains legal review, and submits the request to the Secretary or Assistant Secretary FWP
- WASO Program sends approval to Regional Director and Regional Chief
- WASO Program publishes Federal Register notice and submits the document to Congress (60 day period for each process, which may run concurrently)
- Service awards contract (usually delegated to the Regional Director)

Panel Evaluation Guidance and Process

Introduction

Thank you for participating on the _____ panel! Your panel chairs is _____.

The Panel - Day 1

- On the first morning of the panel, the park representative will provide an orientation to the Park and the concession operations in particular. After, the panel chair will provide a panel overview and discussion.
- Please keep general non-panel conversations with other panel members to a minimum. Respect other's need for quiet work time and step outside the room to discuss other business. There are hoteling offices just outside the room where discussions may take place.
- The panel chair will discuss logistics of the building, beginning and ending times, lunch times, breaks, etc.; an overview of the available guidance documents; and the below expectations for work throughout the week.

Week 1	Week 2
<ul style="list-style-type: none"> ○ Monday, June 1 – Travel Day ○ Tuesday, June 2 - 8:30am Panel Start <ul style="list-style-type: none"> ▪ Orientation: Park Overview & Co-chairs overview of logistics, guidance, and expectations ▪ Start reading proposals ○ Wednesday, June 2 <ul style="list-style-type: none"> ▪ Finish reading proposals ▪ Begin matrix note taking ○ Thursday, June 3 <ul style="list-style-type: none"> ▪ Complete matrix note taking ▪ Start writing draft summaries ○ Friday, June 4 <ul style="list-style-type: none"> ▪ Finish writing draft summaries ▪ Start presentation chart for deliberations <p>Daily check-in calls Wednesday – Friday at 2pm MT.</p>	<ul style="list-style-type: none"> ○ Monday, June 8 <ul style="list-style-type: none"> ▪ Finish presentation chart ▪ Start draft comparative summaries ○ Tuesday, June 2 <ul style="list-style-type: none"> ▪ Continue draft comparative summaries ▪ Start deliberations (after lunch) ○ Wednesday, June 2 <ul style="list-style-type: none"> ▪ Continue deliberations ○ Thursday, June 3 <ul style="list-style-type: none"> ▪ Finish deliberations (if necessary) ▪ Clean up summaries and comparative summaries ○ Friday, June 4 – Travel home <p>Daily check-in call on Monday only at 2pm MT.</p>

"The Offeror stated it....," or the "The Offeror committed to...." You will feel repetitive. That's ok!

- **Don't worry about....** Font type. Font size. Number of spaces after a period. These are all things the panel chairs will fix for consistency later. Do what is comfortable for you.

<i>Instead of this</i>	<i>write this</i>
<i>Present or future tense</i> The Offeror <u>states/describes</u> it provides sorting and waste collection.	Past tense The Offeror <u>stated/described</u> it provides sorting and waste collection.
<i>Passive voice</i> Educational programs were outlined by the Offeror. Passive voice hides who is doing the action. This is counterproductive for panels in most cases.	Active voice The Offeror outlined its educational programs. This is very important in panel documents to clearly indicate WHO – the Offeror is doing an action. If the Offeror uses passive language and the panel is unclear who is making a commitment, then this could be less of a commitment than an Offeror who uses active language. OFF 1 - Passive: Our staff will be trained in customer service. OFF 2 - Active: We will train our staff in customer service.
<i>They/he/she</i> to refer to corporations	It. Corporations have no gender. Visitors and employees are allowed to have genders and you can use "they" or "their" when discussing people.
<i>Indicated</i>	Stated; Described; Provided a Description. To indicate is to suggest, while to state (etc.) represents that the Offeror said it, not the panel.
<i>Capitalize</i>	Draft Contract, Park, Panel, Subfactor
<i>NPS</i>	Service
<i>Would</i>	will
<i>Provided</i>	Submitted (ABC submitted a good proposal)
<i>The panel felt / determined</i>	The panel decided / considered / noted... The panel shouldn't have emotions and only the Director may determine something, so avoid determine.
<i>The Offeror did not provide</i>	The panel could not locate.... The panel takes all the blame – it is never the Offeror's fault for not providing an answer to a question or additional details to clarify a commitment.
<i>Both or All Offerors</i>	Each Each Offeror committed to eliminate all petroleum-based water bottles by 2014.
<i>Offer or Bid</i>	Proposal
<i>Concessioner or Bidder</i>	Offeror
<i>Future Contract</i>	Draft Contract
<i>Current Concessioner</i>	incumbent
<i>Contract length or Duration of the Contract</i>	Contract term
<i>Draft Contract Exhibit B / Exhibit H</i>	Operating Plan (for B) / Maintenance Plan (for H)
<i>Selection Factor</i>	PSF or SSF
<i>Subfactor</i>	Examples: PSF1(a); SSF2(c)

The Comparative Summary

- **Purpose.** The comparative summary is the basis of scoring proposals. It requires you to compare and contrast the proposals against each other. Since the comparative is based on the summary of each Offeror, you can provide less specific detail than included in the summary, unless the comparative difference lies in that detail.
- **Scoring.** A subfactor may have multiple parts; however, you recommend one narrative score for the entire subfactor. The narrative score choices for all factors are **excellent, very good, good, fair, or poor**. Generally, good is a baseline but it's a flexible baseline. There are times where YYZ will provide such a superior response that even though ABC answered the question appropriately, YYZ could be rated an excellent and ABC a fair. The spread between the scoring describes the differences in responses.
- **Writing the Comparative: Section 1.** A suggestion to write the comparative summary is provided in your evaluation template. Start with the strongest proposal. When proposals are equal, default to alphabetical order. Break down the comparative summary into three sections if applicable. In **Section 1**, assign the narrative score and justification for that score. For example, "*YYZ submitted an **excellent** response because it provided four specific examples of the skills it committed to train its staff on while in comparison, ABC submitted a **very good** response because it only provided three specific examples of the skills it committed to train its staff on.*"¹
- **Writing the Comparative: Section 2.** In Section 2, identify the similar elements that each Offeror committed to such as, "*Each Offeror provided an equal and similar response to educating its employees on blah.*"
- **Writing the Comparative: Section 3.** In Section 3, expand on the justification for the scoring from Section 1. Use the sentence structure, "*YYZ submitted a better response than ABC because its 4 examples included sending trainers to training school while in comparison, the panel was unable to locate a commitment by ABC about training its trainers.*"

Comparative Summary Tip. Write Section 1 last. Organize Sections 2 and 3 by topic, not by Offeror. Pick a topic from your Subfactor and write a long sentence that describes how each Offeror responded, in the order of response from best to worst. Then fix your long sentence. Do this for as many topics as you have, and then summarize the topics in to Section 1 and apply the scoring.

Common Pitfalls to Avoid

- **Topic consistency.** If you mention a topic in the comparative summary, it must also be included in the proposal summary and the matrix. Don't introduce new ideas after the matrix. This is also applicable between Offerors. If one Offeror commits to something in particular, also describe how the other Offeror addressed the topic; or if you were unable to locate that it did.
- **Quantity vs. Quality.** Be careful of giving credit based on the number of commitments instead of their substance. Also, be careful of using the phrases "more detailed than." Be specific in exactly what is better than something else.

¹ This is a very simplistic example. You would have to explain why the 4 examples were better than the 3 examples in doing that, would probably avoid providing the total number of examples all together. You should probably also never end a sentence with a preposition.

Panel Deliberation

- **Purpose.** Panel members present their Selection Factor evaluation and narrative scoring recommendations. The panel discusses the evaluation and provides feedback on the narrative score. If the panel decides a different narrative score is justified, the presenting panel member may need to present again after re-writing the evaluation. Expect to enter deliberations with a draft comparative summary and your presentation chart and leave deliberations ready to make final edits to your draft comparative summary.
- **Presentation Chart.** Each panel member will create a chart, in either Word or Excel, that summarizes very briefly the differences among all offers in a format where comparisons are easy to spot. Your panel chairs will provide examples and assistance in preparing this. Your chart may present recommended word scores for the panel to consider, or you may leave this up to the panel to decide on as a group.
- **Numerical Scoring.** At the end of all the presentations, once the panel determines narrative scores for each Subfactor, the panel will collectively award each PSF and SSF a point score based on the subfactor's narrative scores. The point score is determined by regulation (36 C.F.R. § 51.16). PSF1, PSF2, PSF3, PSF4 are scored 0-5, PSF5 is scored 0-4, and SSF1 is scored 0-3. The aggregate score for all other SSFs may not exceed a total of three.
- **Put away those calculators.** Scoring is not a word=# game. There is not a correlation between word narrative scores and numeric scores. "Good" is typically scored as a 3 but does have to be depending on the number of other proposals and how close they are in quality. The panel chair will discuss this more during the scoring part of deliberations.

Post Panel

- **Delete everything that isn't on SharePoint.** Panel members must save all documents to the SharePoint site and assure there are no panel documents saved on network or hard drives.
- **Forever confidential.** The duty to protect the confidentiality of deliberations and content of proposals continues in perpetuity.