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MODERNIZING THE NATIONAL PARK SERVICE CONCESSION PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON
THE INTERIOR

OF THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES

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MODERNIZING THE NATIONAL PARK SERVICE CONCESSION PROGRAM

Thursday, July 23, 2015

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INTERIOR,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:07 a.m., in Room 2154, Rayburn House Office Building, Hon. Cynthia M. Lummis [chairwoman of the subcommittee] presiding.

Present: Representatives Lummis, Gosar, Buck, Palmer, and Lawrence.

Also Present: Representative Norton.

Mrs. LUMMIS. The Subcommittee on the Interior will come to order.

Without objection, the chair is authorized to declare a recess at any time.

Well, good morning. We are so happy to have you. This hearing is going to be forward-looking and informative and interesting, and I am pleased you are here.

The Subcommittee on the Interior today will be examining the concession program at the National Park Service. As we approach next year's 100th anniversary of the National Park Service, we are in an ideal position to look at how this agency, which is custodian of our greatest natural resources, is functioning.

Stephen Mather, the first Director of the National Park Service, once said, "Scenery is a hollow enjoyment to the tourist who sets out in the morning after an indigestible breakfast and a fitful night's sleep on an impossible bed." That sounds like that statement was made after personal experience. Director Mather's sentiment, though, is spot-on. For the vast majority of Americans to enjoy these majestic attractions that belong to them, they need food and lodging and other amenities.

The Park Service has a long history of working with private companies to make sure that visitors receive the concession services they need. In fact, concessionaires have provided these services and promoted the parks since Yellowstone National Park in my home State of Wyoming was designated the Nation's first national park, back in 1872.

Oddly, though, in our parks, visitation is stagnating. National park attendance has not significantly increased over the last 25 years—this is nationwide rather than a park-by-park basis—despite a national population increase of over 30 percent, a spike in international visitors, and the addition of dozens of new park units.

Currently, the typical park visitor is a baby-boomer. Millennials and younger visitors are not coming to the parks in the numbers that we expected. Much of this can be traced to the increase in competition from other tourism opportunities and the Park Service's failure, perhaps, to keep up with the changing tastes of new generations.

Concessioners can serve a pivotal role in reversing this. Our national parks and their concessioners must keep up with changing times. Younger visitors and contemporary families want access to tech amenities, such as Internet access and WiFi. They want comfortable and modern places to stay.

Concessioners want to provide these services, and we, both in Congress and at the National Park Service, need to make sure that they are able to offer these things. More visitors using more services results in more money for concessioners and more money for the National Park Service.

Today, we will be receiving testimony from three concessioners about ways that we can update and modernize the park visiting experience. In addition to these witnesses present, we also have received written testimony from half a dozen other concessioners, representing park operations from all over the country.

Now, the issues that were brought up include, first of all, the complexity of the Park Service bid applications. For example, the recently considered Denali National Park prospectus was 1,629 pages long. I mean, that is how long legislation is around here that affects 20 percent of our economy, that is just sweepingly game-changing. One small single park concession company spent over 2,500 company management hours and more than $90,000 preparing their application.

Expanding the operating season is another issue that was identified. In some cases, lodging, such as camp grounds, is very popular at certain parks and actually sells out. Though these parks are open year-round, their concessions operations are seasonal. Grand Canyon National Park, for example, is affected by this circumstance.

Another is a lack of a rating system. The Park Service does not employ any way in which to recognize excellence among its concessioners. California, for instance, uses an awards bonus point system in State park bid submittals for achieving extraordinary ratings 3 years in a row. Perhaps a good model for us to look at.

There are many other ways we can modernize the National Park concession system, and I hope we can talk about many of these today. I very much look forward to the hearing, and I want to hear suggestions on your ideas for improving National Park Service concession services and visitor experiences.

We are very fortunate also today to have Ms. Lena McDowall, the Chief Financial Officer for the National Park Service, with us here this morning.

Welcome. We thank you and all of our witnesses for taking the time to appear.

I now recognize Mrs. Lawrence, ranking member of the Subcommittee on the Interior, for her opening statement.

Mrs. LAWRENCE. Good morning. I thank all the witnesses who are here. And, Madam Chair, I really thank you for holding this important hearing.

I appreciate the National Park Service's protection and care of our Nation's cherished natural and cultural resources and for the important educational or recreational opportunities that they provide for all Americans. As the Park Service prepares for its centennial celebration in 2016, we must ensure that the very best services are provided for the 280 million visitors that our national parks attract each year.

Vendors play a key role in providing visitor services. They offer a wide range of recreational and retail services, while helping to generate more than $1.2 billion annually in revenue for the Federal Government. Vendors also employ—and this is an important key—more than 25,000 workers and are major drivers in the growth of communities that surround parks.

I understand that the public is demanding more recreational and cultural opportunities during their visits to the national parks. I also understand the vendors are ready, willing, and able to provide these additional visitor services, but they have encountered some barriers.

Today we will examine some of the challenges faced by the National Park Service and vendors in providing the best visitor experience to our parks. These challenges include a rigid contracting process, contracts which create negative cash flow for vendors, and the Park Service's failure to meet public demand for more services.

Although the Park Service has made great improvements in its contracting processes in recent years, more work is needed and more work should be done. We can always work to improve the contracting process, with greater cooperation between the government and the industry. And I look forward to hearing from our witnesses here today as we explore possible solutions that can drive progress on this issue and help create a memorable centennial celebration that all Americans can take pride in and enjoy.

I yield back my time, Madam Chair.

Mrs. LUMMIS. I thank the ranking member.

And the chair notes the presence of the gentlelady of the District of Columbia. Thank you for your interest. We welcome you to participate in today's hearing. Some of our most notable and recognizable National Park Service properties are right here under your nose, and we appreciate your stewardship and fine work on their behalf.

Ms. NORTON. Thank you.

Mrs. LUMMIS. Thank you.

I will hold the record open for 5 legislative days for any member who would like to submit a written statement.

Mrs. LUMMIS. We will now recognize our panel of witnesses.

First of all, once again, I am very pleased to welcome Ms. Lena McDowall, Chief Financial Officer of the National Park Service at the U.S. Department of the Interior; Mr. Terry MacRae, chairman and chief executive officer of Hornblower Tours; and Mr. Alex Klein, vice president and general manager of the Grand Teton Lodge Company and Flagg Ranch Company, one of my personal fa-

vorites; and Mr. Chris Belland, chairman and chief executive officer of Historic Tours of America.

Welcome, one and all.

Please rise and raise your right hands.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Let the record show they answered in the affirmative.

And thank you, and please be seated.

In order to allow time for discussion, please limit your testimony to 5 minutes. Your entire statement, written statement, will be entered into the record, but we will keep you pretty close to a 5-minute clock during your prepared remarks as you share them with us.

The chair recognizes Ms. McDowall for 5 minutes.

WITNESS STATEMENTS

STATEMENT OF LENA MCDOWALL

Ms. MCDOWALL. Thank you.

Madam Chairman and members of the committee, thank you for the opportunity to appear before you at this hearing on modernizing the National Park Service concession program.

In 2016, the National Park Service will celebrate 100 years as the steward of the Nation's most cherished national and cultural treasures. We are actively preparing for our second century and working hard to inspire the next generation of visitors to experience and value their public lands. Concessions will play a critical role in providing food, lodging, and recreational services to those visitors.

Today, concession contractors provide an array of services across the National Park System, from operating iconic lodges to guiding climbers and hunters to providing ferry transportation and children's educational programs. The National Park Service administers around 500 contracts in over 100 parks. These contracts range from $100,000 to over $140 million in annual gross receipts and currently generate more than $1 billion in annual gross revenue for concessioners.

The concessions program has been defined by two major laws: the Concessions Policy Act of 1965 and the National Park Service Concessions Management Improvement Act of 1998.

The 1965 act provided protections for incumbent concessioners, including a preference in the renewal of their contracts, contract terms of up to 30 years, and possessory interest, which recognized a right of compensation for improvements made by concessioners.

By the early 1990s, Congress recognized that the concession system required reform. In many cases, visitor services lacked quality, facilities were not being maintained, and prices were higher than comparable goods and services outside the park.

Most observers attributed these problems to a system that essentially provided a permanent contract to any concessioner that wished to continue operating. The desire to transform the concessions program into a more competitive, business-like operation was the driving force behind the 1998 act.

The 1998 act repealed the preference in renewal, providing preference for only small concession operations; shortened the maximum contract to 20 years; and replaced possessory interest with leasehold surrender interest. The law also called upon the National Park Service to ensure reasonable prices for visitors, to implement more contemporary business practices, and ensure a fair return to the government in the form of franchise fees.

Over the last 14 years, we have taken significant steps to meet those objectives, and there have been many successes. We have significantly increased franchise fee revenue, reduced the amount of deferred maintenance related to concessions facilities, used new contract requirements to better maintain concessions facilities at many parks, and reduced the number of contracts operating under continuations or extensions from nearly half the contract inventory in 2002 to about 17 percent today.

From 2004 to 2014, there has been substantial growth in both concession gross receipts and franchise fee revenue. Concessioner gross receipts have grown from about $805 million to $1.3 billion a year, and franchise fees have grown from about $27 million to over $85 million. The increases are a result of more professional financial analysis; better business opportunities for concessioners; and higher bids from concessioners, as competition has spurred many prospective vendors to bid higher than the minimum required franchise fee.

The more professional prospectus development process and more competition for concession contracts have also resulted in benefits for visitors. A few highlights include new facilities at Yellowstone, Badlands, Kings Canyon, and Hawaii Volcanoes National Parks; increased options for overnight accommodations by adding camper cabins, which combine camping and lodging, at John D. Rockefeller Memorial Parkway and Lassen Volcanic National Park. It has also resulted in a better variety of food and beverage offerings and retail options, featuring locally produced foods and regional handcrafted items; upgraded furnishings at many facilities; and frequent incorporation of park interpretive themes and messages throughout concession operations.

While we have made progress since the implementation of the 1998 law, much work remains. As the National Park Service enters its second century, we are exploring ideas to improve facilities and attract new audiences by providing a broader array of visitor services and by expanding the number of companies interested in bidding on commercial services contracts.

The National Park Service will continue to pursue ways to modernize and improve the program and is open to new ideas that would provide us with an opportunity to better meet our mission.

Madam Chairman, this concludes my testimony. I would be happy to answer any questions you might have.

[Prepared statement of Ms. McDowall follows:]

STATEMENT OF LENA MCDOWALL, CHIEF FINANCIAL OFFICER, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON INTERIOR, HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM, REGARDING MODERNIZING THE NATIONAL PARK SERVICE CONCESSION PROGRAM.

July 23, 2015

Madam Chairman and members of the Committee, thank you for the opportunity to appear before you today at this oversight hearing on modernizing the National Park Service (NPS) concession program. I am pleased to discuss how modernization of the program can enhance visitor experience and increase revenues to address deferred maintenance and needed capital improvements.

In 2016, the NPS will celebrate 100 years as the steward of the nation's most cherished national and cultural resources. The NPS is actively preparing for its second century of operations, and working hard to inspire the next generation of park stewards to experience and value their public lands. Our efforts will draw new visitors, especially millennials and young families, to experience the national parks; we are already seeing this growth, as 2014 visitation grew to 292 million, from 273 million in 2013. Concessions play a critical role in providing food, lodging and recreational services to those visitors.

Concessions in our national parks predate the formation of the National Park Service. Most of the large concessions operations in our Western parks were begun in the late 1800s by the large railroads or companies looking to serve the growing demands of travelers from the eastern United States. Today, concessioners provide a wide array of services across the National Park System from operating the iconic lodges to guiding climbers and hunters, and providing ferry transportation and children's educational programs. The NPS concessions program administers approximately 500 contracts in over 100 parks. These contracts, which range from under $100,000 to over $140 million in annual gross receipts, currently generate more than $1billion in annual gross revenue for concessioners.

The NPS Concessions program has been defined by two major laws – The Concessions Policy Act of 1965 (Public Law 89-249) and the National Park Service Concessions Management Improvement Act of 1998 (Public Law 105-391). The 1965 act provided certain protections for incumbent concessioners, including a preference in the renewal of their contracts, contract terms of up to 30 years, a right of compensation for real property improvements made by the concessioners (possessory interest or PI).

By the early 1990s, Congress began to recognize that the concession system required substantial reform. In many cases, visitor services were lacking in quality, facilities were not being well-maintained and prices were higher than they would be for comparable goods and services outside the park. Most observers attributed these problems to the fact that the system was designed to essentially provide a permanent contract to any concessioner that wished to continue operating. The desire to transform the concessions program into a more competitive, business-like

operation was the driving force behind passage of the National Park Service Concessions Management Improvement Act of 1998.

The Concessions Management Improvement Act repealed the preference in renewal provided by the 1965 law, providing instead a preference primarily for small concession operations and outfitters and guides, shortened the maximum contract term to 20 years, and replaced PI and its valuation formula with leasehold surrender interest (LSI) and a new valuation formula. The law also called upon the National Park Service to ensure reasonable prices for visitors, implement more contemporary business practices and ensure a fair return to the government in the form of franchise fees.

Over the last 14 years, the Commercial Services program has taken significant steps to meet those objectives and there have been many successes. The NPS greatly reduced the number of contracts operating under continuations or extensions (from nearly half the contract inventory in 2002 to about 17% today); significantly increased franchise fee revenue; reduced the amount of deferred maintenance related to concession facilities by requiring incoming concessions to cure existing deferred maintenance (generally within the first three years of the contract); and used new contract requirements to better maintain concession facilities at many parks.

Franchise fee revenues have grown by 12% annually since 2004, from $27.6 million in 2004 to $85.4 million in 2014. Concessioner gross receipts account for part of the increase in franchise fee revenues. Concessioner gross receipts have grown by 5% annually since 2004, from $804.8 million in 2004 to $1.3 billion in 2014. Increases in the franchise fee percentage in new contracts have also contributed to the increase in franchise fee revenue. The average franchise fee in 2004 was 3.2%, while the average franchise fee in 2014 was 6.9%. The average fee has increased as a result of more professional financial analysis by the NPS and outside consultants, better business opportunities for concessioners and higher offers from concessioners, as competition has inspired many prospective vendors to offer higher than the minimum required franchise fee.

The more professional prospectus development process and more competition for concession contracts have also resulted in significant benefits for visitors to national parks. A few highlights include:

- high quality new facilities at Yellowstone, Badlands, Kings Canyon and Hawai'i Volcanoes national parks;
- innovative fitness programs, equipment, workshops, and outreach to underserved communities at Gateway National Recreation Area;
- increased options for overnight accommodations by adding camper cabins which combine camping and lodging at John D. Rockefeller, Jr. Memorial Parkway and Lassen Volcanic National Parks;
- improved technical and safety training for guides;
- better variety of food and beverage offering and retail options, many featuring locally produced foods and regional handcrafted items;
- upgraded furnishings for many lodging and food and beverage operations; and

- frequent incorporation of park interpretive themes and messages (including historical, ecological, cultural, and environmental) throughout operations (e.g., décor, retail items, direct messages).

While we have made much progress since the implementation of the 1998 law, much work still remains. As the National Park Service enters its second century, we are exploring ideas to improve facilities, address evolving visitor needs and attract new audiences by providing a broader array of visitor services, and expand the number of companies interested in bidding on commercial service contracts. At the same time, within existing law, the National Park Service will continue to pursue ways to modernize and improve the program and is open to new ideas that would provide us with an opportunity to better meet our mission.

This concludes my testimony. I would be happy to answer any questions you might have.

Mrs. LUMMIS. I thank the gentlelady.

Mr. MacRae, you are now recognized for 5 minutes.

STATEMENT OF TERRY MACRAE

Mr. MACRAE. Thank you, Madam Chairman, members. The National Park Hospitality Association is pleased to offer testimony today regarding the great opportunity we have to continue providing visitor experiences in our amazing national parks.

My name is Terry MacRae, and I serve as the volunteer chairman of the National Park Hospitality Association, which is the organization that has members providing more than $1 billion of visitor services within national park units.

Just a little bit about my company. We started as a concessioner in 2006 with the service to Alcatraz Island; added the Statue of Liberty and Ellis Island Immigration Museum in 2008. Since then, we have served over 45 million visitors to those 2 parks. We use a fleet of 15 different vessels and provide 250 direct jobs, many to professional mariners. In 2014, we paid over $19 million in franchise fees to the National Park Service.

Hornblower and the other members of NPHA are grateful every day to be concession partners of the National Park Service. We have some amazing member companies that have have super promotional capabilities, contemporary management practices—all of which are intended to produce benefit to those companies but also more financial resources for the parks and, of course, great visitor services.

My comments also reflect today the respect we have for the employees and leaders of the National Park Service. They truly have a complicated, challenging job to manage some of the greatest natural and cultural assets anywhere and keeping these assets relevant to the American public. And, by and large, they do an amazing job, considering their challenges.

America's National Parks are a unifying legacy. With the centennial coming along, it's really an important time in the parks' history. And the parks, frankly, should be nonpartisan. They shouldn't be R's and D's and I's visiting parks. They are all Americans.

The fact that the centennial is here shouldn't hide the reality that we have a few challenges within the parks. There is the need for new resources and new strategies. But, frankly, even during the worst times and the Great Depression, the parks were able to advance and move forward. And so, today, I think some of that same vision is important to bring to bear.

As the chair pointed out, visitation in the parks has really been unchanged for the last 25 years, particularly considering that the population has grown and the number of new park units has been added. There's fewer visitor choices in the parks, in some cases. There should be more opportunities to provide those visitor services. And, frankly, considering the overall budget of about $3 billion—and less than $100 million of that comes from franchise fees paid by the visitors through the concessioners—it seems like there is a huge opportunity there.

Concessioners pay almost $100 million in franchise fees, but there are certainly more ways that those can be improved. We have

almost 25,000 employees working, serving about 100 million visitors annually.

So, many of the parks and lodges that people enjoy in the parks today were built by some of the first concessioners. The maintenance of those facilities is now a challenge. There's plenty of opportunity to consider how that should be done in the future.

The Concession Act of 1998, I'm a poster child for that. We came along after that act, and we provided many of the benefits that Lena spoke about, arriving and working under a new system. But the fact of the matter is that the Concession Act needs a tune-up. After 15 years, there are some opportunities to make some fixes there to deal with things like LSI and other areas that need to be improved.

You know, in fairness to the National Park Service, they have adjusted dramatically over the last 15 years to the new Concession Act, and they have built a strong new team of concession and business service leaders, and they are gathering more momentum and traction all the time.

Efforts to promote the national parks are lagging, considering what a great opportunity that is. And, with the centennial, there is more and more opportunity to do that. By and large, a tune-up of the 1998 act that includes modernizing some of the business practices and adding the capability to promote the parks to the overall partnership between the concessioners and the Park Service is important.

I'm going to introduce a great article here by National Geographic that talked about how good old marketing saved the national parks 100 years ago, when they were first trying to get traction.

And, in our testimony, we have provided 10 important recommendations to try to advance the cause of both the concessioners and the National Park Service in serving the visitors.

So I think that concludes my remarks, and I'm happy to answer questions and have discussion as appropriate. Thank you.

[Prepared statement of Mr. MacRae follows:]

Statement of Terry MacRae, Chairman, National Park Hospitality Association Before the Subcommittee on Interior, Committee on Oversight and Government Reform, U.S. House of Representatives, On Modernizing the National Park Service Concessions Program, July 23, 2015

Chairman Lummis and Members, the National Park Hospitality Association (NPHA) is pleased to offer this testimony regarding ways to improve the tradition of great visitor experiences in these special places through a partnership between concessioners and the National Park Service. My name is Terry MacRae and I serve as the volunteer Chairman of the NPHA, an organization that supplying more than a billion dollars of visitor services within National Park units each year. We provide lodging and food services, transportation and retail, guide services and more.

I might also share information on my company, Hornblower Cruises. My company has been an NPHA member since 2007, shortly after we commenced round-trip ferry service to Alcatraz Island, a part of the Golden Gate National Recreation Area. Since 2008, we have also provided ferry service to the Statue of Liberty National Monument and the Ellis Island Immigration Museum. Since becoming the concessioner to these amazing, iconic places, we have served over 45 million national park visitors. For these concessions operations, we use a fleet of 15 vessels, including some of the greenest hybrid vessels, and operating year round, we happily provide over 250 direct jobs, including many for professional mariners. Hornblower recently began providing boat tour and hospitality services to the base of the Niagara Falls in Canada, which makes us the "trifecta" operator of iconic boat experiences, and provides us another view on concession operations. In 2014, Hornblower paid over $19 million in franchise fees to NPS, even though our operations were limited by Sandy.

Hornblower and the other members of NPHA are grateful every day to be a concession partner of the National Park Service. Our association logo proudly proclaims "Great Experiences in Great Places." My comments today speak to the proven hospitality expertise of our members, promotional talents and contemporary management practices of companies like mine to drive increased visitation and more diverse park visitors as well, thus creating more financial resources for efficient use by the Parks. Our comments also reflect the great respect we have for the employees and the leaders of the NPS. They have a complicated, challenging job of managing some of the nation's preeminent natural and cultural assets and of keeping these assets relevant and cherished by the American public.

America's national parks are a marvelous, unifying legacy deserving celebration.
As the National Park Service (NPS) reaches its Centennial year, we can celebrate and continue contributions by leaders from both parties who created this special collection of natural, historic and cultural places – and to invite all to share in their benefits.

But the excitement of a Centennial must not hide the reality that America's national parks need help.
Our parks need new resources and new strategies. Vision and action shaped our national park system even as America fought and recovered from our Civil War. Vision and action advanced our national park system even in the depths of the Great

Depression. And vision and action today, even as we confront global terrorism and other great challenges, can make the future of America's national park system better.

America's national parks face big challenges today.
National park visitation has been unchanged over 25 years despite a growth in the U.S. population of more than 30%, a surge in international visitors and the addition of dozens of new park units. Visits to national parks in 1987 were 287,244,998 according to NPS. Visits in 2014 were 292,800,082. But if you deduct visitation to just two of the 60+ recent additions – the World War II Memorial and the Franklin D. Roosevelt Memorial – 2014 visitation drops below the levels of 1987. Stagnant park visitation reflects more leisure choices today ***but is also the result of reduced visitor activity choices*** – potential visitors are choosing other destinations. There are fewer park campsites, fewer lodging rooms, fewer restaurant seats, fewer ranger-led walks, fewer tours and outings. Visitor services eliminated by NPS have not been offset by new outdoor activities and special events. Yet new visitor services could generate non-appropriated funding which would supplement and leverage the nearly $3 billion in general funds received by the agency each year.

Concessioners provide vital visitor services exceeding $1.2 billion annually in more than 100 national parks.
They provide lodging, food services, gifts and souvenirs, equipment rentals, transportation and other visitor services under competitively-awarded contracts. Concessioners have been creating lasting national park memories for more than 125 years – in fact, early leaders of the National Park Service recruited concessioners to build lodges and other facilities and furnish transportation. As the first Director of the NPS said, "Scenery is a hollow enjoyment to the tourist who sets out in the morning after an indigestible breakfast and a fitful night's sleep on an impossible bed." In fact, concessioners were seen as key to the dual mission of the new agency when it was created in 1916: "... ***to conserve the scenery and the natural and historic objects and the wild life therein and <u>to provide for the enjoyment of the same</u>*** ..."

Concessioners will pay $100+ million in franchise and other fees this year to NPS.
The in-park concessioner workforce of some 25,000 persons assists an estimated 100 million visitors annually. Concessioners have long been primary promoters of park visits – and the parks in which they operate are among the most visited national park units and are major contributors to the NPS estimate of $27 billion annually in local economic benefits from park visitors.

Concessioners built many of the lodges and key visitor facilities in our parks.
Many of the first concession companies were affiliated with railroads. More recently, lodging was built by companies linked to some of the biggest park philanthropists – including RockResorts. These buildings are now government property. Maintenance and operation of the facilities largely remain a role for concessioners because NPS has never been able to secure adequate funding for maintenance and modernization.

In 1998, the situation deteriorated. The 1998 Concessions Act needs fixes.
Contracts were shortened to 10 years – even though legislation allowed terms of up to 20 years. The pricing approval process has become more burdensome. Concessioner

efforts to add new visitor services have become very difficult, even where there is no opposition. And despite clear direction from the Congress to make "protecting and preserving park areas" and "providing necessary and appropriate services for visitors at reasonable rates" the primary goals of concessions contracts, NPS is now demanding markedly higher franchise fees – the percentage of all revenue going to the NPS.

Many NPS requests for concessioner services issued have generated no offers.
NPS is pursuing an unsustainable strategy of forcing higher payments by concessioners to the agency while simultaneously reducing business opportunities. The lack of bids for many recent prospectuses strongly suggests that NPS is very likely failing to provide the opportunity for concessioner profitability required by law. Prospectuses costing millions of taxpayer dollars to prepare have had to be redone, adding new taxpayer costs. Other complications have arisen.

While the facilities operated by concessioners need improvements, franchise fees are being used for other purposes.
The law requires that at least 80% of all franchise fees be retained in the unit generating the fees for visitor services and urgently necessary resource management programs and operations, but NPS has "borrowed" these fees for other purposes and other units. Major improvements in concessioner-operated facilities with franchise fees are rare.

There has been no expansion of concessioner-provided visitor services to the new units of the national park system.
In fact, concessioner services have not even been contemplated as the new unit planning process proceeds.

Efforts to promote national parks in conjunction with the 2016 Centennial of the National Park Service will magnify the challenges.
Inviting all Americans to visit their parks complies with the mission outlined in the Organic Act of the NPS: "***The service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations.***" But we need to be prepared: when Americans accept the invitation and actually show up at their parks, dated and inadequate visitor services will not deliver great park experiences.

NPS actions undercut contemporary, top-quality concessioner visitor services and directly contradict its own policy for concessioner-provided services:

> ***Concessioners fill a vital role in helping the National Park Service (NPS) carry out its mission. Private companies are drawn to working with NPS in order to offer services to park visitors, which are not provided directly by the government. Concessioners specialize in these operations and are thus able to provide quality services at reasonable prices. By welcoming the private sector as a partner in park operations, the National Park Service broadens the economic base of the region and communities surrounding the parks.***

It's time to use vision and action to overcome these challenges. We can fix the challenges and ready our parks for generations of new visitors. Some changes will

require legislative changes – but in many cases, solutions can be achieved by changes in agency operations and by ensuring cooperation and communication needed for shared park protection and visitor services efforts. Here's how:

	Allow contemporary hospitality services	Promote visitation	Expand park resources
1) NPS should end reliance on 10-year contracts for concessioner operations which require substantial investments. *Congress should extend the allowed contract length beyond the current limit of 20 years to a maximum of 40 years* when such a term would allow complete or significant recovery of concessioner investments in visitor infrastructure and perhaps even allow for historic tax credits.	x		x
2) *Congress should charge NPS with submitting at least 12 significant opportunities to expand appropriate visitor services each year for five years. The opportunities should either reduce/eliminate deferred maintenance or expand visitor services at no substantial cost to taxpayers through private investments.* Some structures with substantial deferred maintenance should be replaced with new facilities meeting today's best design standards, including both LEED- and ADA-related standards.		x	x
3) *NPS should replace the burdensome, costly and inflexible design-focused prospectus process with a new performance-based one,* paralleling the use of foundation documents to replace general management plans. Existing concessioners should be actively involved in the discussion of "next-generation" concessions in a park unit, and the entire process should be more transparent.	x		
4) *NPS should welcome concessions operations changes to reflect new technologies and visitor expectations. Testing of new services should be encouraged* – like raising the Dry Tortugas ferry cap or utilizing food trucks rather than new permanent buildings where long-term demand is uncertain or seasonal.	x	x	x
5) *NPS should encourage integration of all visitor services in parks, including campground management, to provide better visitor access to all overnight accommodations.* Unified marketing of visitor services, including overnight options, will increase utilization of public investment and opportunities.	x	x	x
6) NPS should *encourage, recognize and reward appropriately superior operations by concessioners. Rewards can be determined locally and might include contract extensions, increased discretion on pricing and more.*	x		

7) *Congress directed the Forest Service in 2011 to encourage ski areas to add appropriate new services under existing permits and under existing provisions for payments to the federal government. Congress should take parallel action for concessioners in national parks*, allowing reasonable mid-contract changes promptly where the new services are appropriate.		x	x
8) Congress should authorize *park-level special accounts for visitor facility construction and reconstruction by concessioners*, and authorize special visitor service surcharges to fund these projects.		x	x
9) Congress should *increase the size of concession contracts which qualify for preferential right of renewal from $500,000 in annual revenues to $1 million or more.*	x		
10) Congress should allow NPS to *incorporate recognition of and credit for superior performance by a concessioner in the evaluation of new concessions offers* while still encouraging competition designed to improve visitor services and park resource protection.	x	x	x
11) Congress should encourage concessioners and *NPS to enter into long-term agreements with gateway destination management organizations and other entities which allow key park visitor services to be underwritten* with local tourism taxes and fees.		x	x

I am pleased to augment this presentation with statements by a variety of NPHA members, large and small, with suggestions for improving the National Park Service concessions program, including those from my own company.

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Mrs. LUMMIS. Thank you, Mr. MacRae.

I now recognize the gentleman from the beautiful, beloved State of Wyoming, Mr. Klein, for 5 minutes.

STATEMENT OF ALEX KLEIN

Mr. KLEIN. Chairman Lummis, thank you. Members of the subcommittee, thank you for the opportunity to testify.

My name is Alex Klein. I'm the vice president and general manager of Grand Teton Lodge Company and Flagg Ranch Company in the great State of Wyoming. I'm joined by representatives from Delaware North Company and Forever Resorts, who also operate in Wyoming.

Gentlemen, thank you for joining me.

We operate lodging, campgrounds, restaurants, retail outlets, gas stations, and other visitor activities in two national park sites. Many of these facilities were constructed or modernized by RockResorts shortly after John D. Rockefeller donated the land that is now part of Grand Teton National Park.

We are fortunate to have an incredible group of National Park Service staff to work with every day. Park Superintendent David Vela is to be commended for his leadership. My comments today are in the spirit of the continued successful partnership with the National Park Service.

There are three areas I would like to focus on: improving facilities and service, implementing modern business practices, and recognizing and rewarding outstanding concessioners.

We strive to not only maintain our facilities and services but improve them where it makes sense. In campgrounds, we have made significant improvements, including better ADA accessibility, more electronic hookups, and the addition of bear boxes. In our lodging facilities, we have added high-speed Internet access in most locations.

Just in the last year, at Jackson Lake Lodge, we have expanded food and beverage service through the addition of an outdoor kitchen, renovated 361 guest bathrooms—in the winter in Jackson Hole—and made other infrastructure improvements. Last month, we started providing guided kayak tours at our Colter Bay Village Marina.

I have two recommendations that will encourage even more improvements of facilities and additional services. Firstly, contracts need to allow for more flexibility to address services and improvements not anticipated at the beginning of the contract term. Secondly, all parties would benefit from a simplified process for capital projects. This would lead to a better and more timely use of these funds.

The price approval and standards evaluation process would also benefit from the implementation of modern business practices used in the hospitality industry. In Grand Teton National Park, we have worked with the National Park Service to pilot the use of modern revenue management strategies, such as a length-of-stay restriction, and are working on proposals to introduce even more modern yield management practices.

Through our online comment card system, we receive realtime feedback from visitors. We share access to this system with the Na-

tional Park Service in allowing them full review of all guest feedback. Web sites such as TripAdvisor also provide guest reviews that can be reviewed by consumers and park personnel alike.

My recommendations to implement modern business practices include: consider whether or not the current NPS practice of standards and evaluation remains relevant with the wealth of other data available; and encourage the further testing of modern revenue management strategies used industrywide and consider market declaration pricing in parks where significant lodging is available in gateway communities.

In the 60 years that we have operated in Grand Teton National Park, we feel our overall performance has been strong. We have provided high-quality visitor services, built a sustainable business, maintained strong community relationships, and partnered with the National Park Service. Unfortunately, this strong track record provides no assurance we will be successful in continuing our operations beyond our current contract.

The current competitive process for concession contracts is imperfect. On one hand, the current process has done a good job of raising the bar for performance and challenges concessioners to operate more safely, more sustainably, and provide greater care to the assets. On the other hand, the unintended consequence has been further consolidation of concession contracts, less competition, and the reward of concession contracts to those that cannot only necessarily deliver the best operations but those that deliver the best proposal.

I have three recommendations for the contract process: A system designed to reward those that do provide excellence in concession operations would benefit both the incumbent concessioners as well as the National Park Service. Such a system would encourage constant innovation and excellence in the performance of the contract. Longer contracts could provide the security of a return on investment where significant facility and infrastructure upgrades are required. And adding transparency wherever practicable. The current process lacks transparency and doesn't allow unsuccessful bidders to understand their perceived shortcomings.

Thank you again for the opportunity to be here today. Thank you to the men and women of the National Park Service, who steward the parks on behalf of the American public and future generations. I'm happy to answer any questions you might have.

[Prepared statement of Mr. Klein follows:]

Statement of Alex Klein
Vice President & General Manager of Grand Teton Lodging Company & Flagg Ranch Company

Subcommittee on Interior, Committee on Oversight and Government Reform, U.S. House of Representatives
On Modernizing the National Park Service Concessions Program
July 23, 2015

Chairman Lummis, and members of the Subcommittee, thank you for the opportunity to testify today regarding the National Park Service (NPS) Concession Program, My name is Alex Klein and I am the Vice President and General Manager of Grand Teton Lodging Company and Flagg Ranch in Grand Teton National Park in the great state of Wyoming.

Background

Grand Teton Lodge Company was originally founded by John D. Rockefeller Jr. as he was purchasing land that became part of what is now Grand Teton National Park. The creation of Grand Teton Lodge Company by John D. Rockefeller in the early days of the National Park was to meet the needs of visitors enjoy these public lands. Over the years, private investment did what couldn't be done through public funding. The Danny Ranch (now Jenny Lake Lodge) was expanded and bathrooms added to the rustic cabins. Jackson Lake Lodge was constructed as one of the first modern lodges in the National Park system and contained 385 guest rooms and 10,000 square feet of meeting space to host not only traveling families but also significant events and conferences such as the Annual Symposium hosted by the Kansas City Federal Reserve, and the 1989 meeting of Secretary of State James Baker and Soviet Minister, Eduard Shevarnadze that resulted in the thawing of the cold war. 166 historic cabins from guest ranches throughout the park were relocated to Colter Bay and modernized to accommodate visitors. Three remote meal sites were selected to provide meals to visitors that were participating in activities so that they could be well served while experiencing the grandeur of the Park. These privately built facilities were subsequently turned over the National Park Service to be operated as concession facilities.

Today, Grand Teton Lodge Company and Flagg Ranch Company continue to care for and improve these facilities.

The two concession contracts held by Grand Teton Lodge Company and Flagg Ranch Company operate 680 overnight lodging rooms, over 950 campsites (including camper cabins and tent cabins), 9 restaurants and lounges, 13 retail outlets, and 3 gas stations. Additionally we operate visitor activities including a full service marina with rental boats, scenic lake cruises, and guided fishing; horseback and wagon rides in four locations; wild and scenic river raft trips down the Snake River; and guided fly fishing. The facilities operated include the Historic Jenny Lake Lodge and Historic Cabins of Colter Bay Village and Jackson Lake Lodge, a Historic Landmark.

It must be noted that Grand Teton National Park is fortunate to have an incredible group of National Park Service staff that we work very closely with every day. Park Superintendent David Vela is to be commended for his leadership. Together we have recently hosted a kick-off event for the Every Kid in a Park Program welcoming 65 fourth grade students and 21 parents and teachers from

Blackfoot Idaho for a two day experience in the Park. We are also excited to support the Park's *Inspiring Journeys* project that is currently underway to restore and improve the trails and visitor service area in the heavily used south Jenny Lake area of the Park. This project is a great public/private project that will enhance the visitor experience in Grand Teton National Park for many generations to come.

The mission of Grand Teton Lodging Company and Flagg Ranch Company is the same as our parent company Vail Resorts and that is: Experience of a Lifetime. In partnership with the National Park Service we strive to provide guests in the Park with an Experience of a Lifetime whether they are staying with at us at one of our properties or just passing through for the day.

My comments today are in the spirit of the successful partnership we have with the National Park Service and identifying areas for future conversation as we look towards the future of the National Park Service and the role of concessionaires in the parks.

There are three main areas I would like to focus on today: the ability for concessioners to improve their facilities and service to address changing guest expectations, implementing modern business practices to more efficiently administer the concession program, and the process by which outstanding concessioners can be recognized in the contract bid process.

Improving Facilities & Services

We are living in an exciting time of generational change, technology changing how we communicate and also how we experience travel, and federal budget constraints. This reality raises many questions that collectively must be answered to insure that National Parks remain relevant:

How can the Parks meet expectations of a generation that is more diverse and has less experience with nature?

How can Parks preserve the past while meeting the needs of today's visitors and competing globally with other destinations?

With an increase in the deferred maintenance backlog (now estimated at over $11 billion dollars) reflecting a deterioration of facilities and infrastructure can Parks continue to even maintain the status quo?

What is not at question is that the preservation of the natural landscapes, diverse wildlife and cultural resources should remain the primary mission of the NPS. I am not a proponent of significant growth of facilities and infrastructure within our National Parks but I do believe there are opportunities for responsible expansion and enhancement our visitor services and facilities in the already developed areas of the Parks.

As we prepare for the next century of the National Park Service and welcome people from around the globe I believe that modernizing the partnership with concessioners will continue to play a large role insuring that "America's Greatest Idea" continues to live up to that designation. I am happy to report that we have not been standing still in preparing for the future at Grand Teton.

Facilities

A recent condition assessment of Grand Teton Lodge Company resulted in finding of just $2 million in deferred maintenance across the 350 + structures under our care. This represents strong stewardship as $2 million is a very small percentage compared to the value of these assets and many of the findings have been addressed in the last two years.

Beyond maintaining facilities we strive to meet the needs of visitors through improvements.

In campgrounds that were historically operated by the National Park Service we've made significant improvements. These include better ADA accessibility, more electric hook-ups, the addition of bear boxes in many locations, and the addition of 40 camper cabins to the Flagg Ranch campground to provide accommodations for those traveling without a tent. Sleeping bags and tent rentals are also available at Flagg Ranch for those travelers that might be new to camping. With rates starting at $24.00 ($12.00 for those with a senior Pass) and gas prices at their lowest in many years camping is a very affordable way to visit the National Parks.

Grand Teton Lodge Company is a leader in bringing high speed internet connectivity to visitors in the developed areas of Grand Teton National Park. In 2014 we were able to work with internet providers to install a full gigabit circuit to serve our guest and employee facilities and now have high speed internet in all guest rooms at Jackson Lake Lodge and Jenny Lake Lodge as well as select locations throughout Colter Bay Village. This service also helps us to attract high quality employees and is available to them in our onsite dormitories, a 72 site employee RV park, and year-round staff housing. We are actively working with the National Park Service to expand this service to include more facilities including Flagg Ranch that currently has very poor connectivity.

We just recently completed a renovation of all guest bathrooms at Jackson Lake Lodge, the renovation of six public restrooms and critical infrastructure upgrades to employee and back of house facilities. We continue to work with the National Park Service on projects to enhance the visitor experience protect these historic assets.

Services

We've had recent successes in working with the NPS to enhance and expand services in Grand Teton National Park. This year we added an outdoor kitchen to our Blue Heron Lounge at Jackson Lake Lodge to provide higher quality food and increased variety to the menu. We've recently taken an underutilized space in our Jackson Lake Lodge Gas Station and converted it to a small retail outlet selling convenience items and souvenirs. Lastly, we received and executed a contract amendment to add guided kayak tours to our offerings out of our Colter Bay Marina. We are currently working on a proposal that will add a small "spa" facility to Jenny Lake Lodge and anticipate making a request to expand employee housing to meet the need for a larger work force.

Recommendations

It is important for the NPS and concessioners to maintain flexibility in the contracts to address services and improvements not anticipated at the beginning of the contract term.

A simplified process for capital projects would lead to better use of funds, more timely investment and encourage projects improving the visitor and employee experience.

As we've worked to undertake capital projects under the current contracts it is apparent that, for both concession personnel and the National Park Service, the process is confusing and difficult to administer. The complexity of the process is a disincentive to capital investment and often times delays needed investment with increased planning and approvals required of all parties.

Illustrative of this complexity is the budgeting of funds around projects. Like many current concession contracts we are required to fund and ultimately together with the NPS co-administer a maintenance reserve account. A maintenance reserve is a best industry practice utilized by leading hospitality management companies to hold owners accountable for upgrades; however, this account only contemplates one type of expenditure.

Undertaking renovation projects often times requires the use of funds classified as personal property, leasehold surrender interest (LSI) eligible expenses for projects that exceed 50% of the building value or assets that are considered fixtures, and cyclical maintenance such as paint and carpet. Projects such as installing new assets such as buried fiber optic cable for communications pose challenges as in many cases this type of infrastructure doesn't fit the current draft guidance for investment classification. In other cases elements such as partitions, moveable walls, marina docks and other rather permanent assets are classified as personal property and not eligible for use of maintenance reserve fund expenditures. Each project requires significant analysis and detailed breakdown to determine funding both in planning and in the ultimate determination credit to each type of expenditure. This process takes a significant amount of time and resources for both concession and NPS personnel. In many cases classification of expenditures doesn't align with GAAP practices creating additional confusion and tracking challenges.

Modernizing Concession Administration

In a world where consumers can shop and compare hotels and services online, concessions must abide by decades old practices. While we work very closely with local concessions personnel and other NPS staff members to operate efficiently, required processes and lack of understanding on both sides ultimately create challenges that are counter to our shared goals. Current concession administration includes price approvals and standards/service evaluation resulting in significant administrative burdens to both concessions and NPS staff.

In markets such as Jackson Hole it could be argued that consumers have a choice staying in the town of Jackson or nearby Teton Village in addition to the in-park lodging and that in essence rates on concession hotel product should be determined by the market. While Grand Teton Lodge Company and a few other concessioners are located in the Park, we are in fact in many cases equidistant or further from major visitor attractions such as the new Craig Thomas Visitor

Center, the new Laurence S. Rockefeller Preserve, and the popular hiking destinations of Inspiration Point and Hidden Falls.

We've recently worked with NPS to pilot the use of modern revenue management strategies such as length of stay restrictions and are currently collecting data on the movement of rates in the local market to determine if more flexibility in approved lodging rates would better match the yield management strategies used in the industry.

Through our online comment card systems we receive real time feedback from the thousands of visitors that stay overnight in our accommodations, shop in our stores, dine in our restaurants, and participate in our activities. We share access to this system with the National Park Service allowing them full review of all guest feedback. Furthermore tools such as TripAdvisor, Yelp and other consumer review websites measure performance that can be viewed by consumers and Park personnel alike.

Recommendations

Consider whether or not the current NPS process of standards and evaluations remains relevant with the wealth of data available through these systems and tools that monitor visitor experience.

Encourage the further testing modern revenue management strategies that will help lead to increased distribution of NPS hotel room inventory to visitors, higher occupancy, and a more efficient concession management program.

Recognizing Outstanding Concessionaires in NPS Bid Process

Grand Teton Lodge Company was very pleased to be awarded our current concession contract that began in 2007 and expires in 2021. We are equally pleased that Flagg Ranch Company was awarded a similar 15 year concession contract in 2011.

In the 60 years that Grand Teton Lodge Company has operated in Grand Teton National Park and the 4 years that Flagg Ranch Company has operated the John D. Rockefeller Memorial Parkway we feel that our overall performance has been strong: providing guest with Experiences of a Lifetime, building a sustainable business that makes a reasonable profit for our shareholders, building strong relationships with the local community, and successfully partnering with the National Park Service. We strongly believe in the NPS mission of preserving unimpaired the natural and cultural resources of the National Park System for the enjoyment, education and inspiration of this and future generations.

The current competitive process for concession contracts is imperfect. On one hand the current process has done a good job of raising the bar for performance and challenges concessions to operate more safely, sustainably and provide greater care to assets. It creates a challenge to the incumbent and other bidders to better the status quo. On the other hand, the unintended consequence of the current process has been further consolidation of concession contracts, less competition and the reward of concession contracts to those that can deliver not necessarily the

best operations but the best proposal. There is likely no perfect process for all stakeholders but there may be areas in which strides can be made.

As we are now in the second half of our concession contract at Grand Teton Lodge Company we remain committed to our shared goals and are optimistic that our continued strong performance for visitors and preserving the assets in our care will benefit us as we seek another contract.

Recommendations

A system designed to reward those that do provide excellence in concession operations would benefit both incumbent concessioners as well as the National Park Service. Rather that challenging ourselves to innovate every time a concession contract comes up it would encourage constant innovation and excellence in the performance of a contract. Knowing that strong performance would have a significant impact on retaining a contract would enhance business value and allow for ongoing investment in facilities and a longer term strategic vision.

Longer contracts for known strong performers could provide the security of a return on investment where significant facility and infrastructure upgrades are required. These longer contracts could reduce the administrative burden and cost of prospectus development mutually benefiting all parties.

The current process lacks transparency and doesn't allow unsuccessful bidders to understand their perceived shortcomings. This lack of transparency also leads to mistrust of the process whether real or perceived.

Conclusion

Chairman Lummis, members of the Subcommittee, thank you again for the opportunity to be here today. Thank you to the men and women of the National Park Service who steward the National Park System on behalf of the American public and future generations.

I look forward to continuing our work with the National Park Service to provide the Experience of a Lifetime to our guests now and in the future. There is no lack of opportunity for us to collaborate to benefit the parks, our guests, and our businesses and I look forward to continuing that dialogue.

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Mrs. LUMMIS. Thank you, Mr. Klein.

The chair now recognizes Mr. Belland for 5 minutes.

STATEMENT OF CHRISTOPHER C. BELLAND

Mr. BELLAND. Madam Chair, distinguished members, ladies and gentlemen, by way of introduction, my name is Chris Belland. I'm the CEO of Historic Tours of America.

We're the largest operator of themed vehicles in North America, hosting approximately 3 million guests each year, with operations in Key West, St. Augustine, Savannah, Washington, Boston, and San Diego, and most recently were awarded the contract for interpretive services in Arlington National Cemetery.

We also operate 10 historic attractions, including, for the State of Florida, the Truman Little White House; Potter's Wax Museum, the first wax museum in the United States; the Boston Tea Party Ship and Museum; a $25 million recreation of Griffin's Wharf, celebrating the single-most important event leading to the American Revolution.

More to the point, in concert with the founding owners, we have operated the ferry to the Dry Tortugas National Park in Fort Jefferson, which is 70 miles west of Key West, for a number of years and in 2010 were awarded the sole-service contract.

Ken Burnscharacterized the National Park System as "America's best idea." I submit that the dedicated members of the National Park Service with whom I have been able to deal and their partner concessioners believe that.

I had the opportunity to hear a speech by Director Jon Jarvis entitled "Field Guide to American Values" and came away convinced that the great parks of this country are the truest and most pure definitions of what makes us a great Nation.

But the National Park Service is facing enormous challenges: There is a backlog of billions of dollars of deferred maintenance; the National Park Service is mired in well-intended but archaic rules of engagement with its concessioners; the NPS faces almost routine annual budget cuts; and the parks are fighting for relevance in the new age of technology.

So we can gnash our teeth in despair or collectively embrace the wisdom of the Chinese proverb, "The crisis is opportunity riding the dangerous wind." On the eve of the 100th anniversary of the National Park Service, it is past time to seize the day. The concessioners represent hundreds of millions of dollars of revenue and tens of millions of dollars of potential infrastructure investments and are ready to join hands to do just that.

Thank you for this opportunity to share for your consideration our individual and collective viewpoints, ideas, and hopes and dreams for the future.

Our concession is bigger than most but certainly smaller than many. We will generate revenues this year between $9 million and $10 million. But I'm here as a case study to shares some lessons we learned over the past 3 years concerning a request to amend our contract. If learned from, these lessons and observations might make all the difference, or not—for, as we know, those who will not learn from their mistakes are bound to repeat them.

The Reader's Digest version of our background of our concession is: We were awarded the contract in November 2010. Previously, there were two operators, each allowed to carry 100 passengers, for a total of 200 a day, paying the park a measly few hundred dollars for the privilege. Our contract required the production of a brand-new, state-of-the-art, high-speed ferry, at a cost of approximately $6.5 million, with Coast Guard certification to carry 250 passengers.

Here is where it gets interesting. The general management plan called for a maximum daily visitation of 350 from all sources, such as our ferry, seaplanes, and private vessels. We were now limited to only 150 passengers a day. Why such a large vessel? To provide a commodious experience for passengers and to carry camping gear. Fair enough. But it became immediately evident that the daily visitation of 350 was never achieved. In short, there was excess capacity.

Given our new ability to work with the National Park Service to market a product, we were confronted almost daily with standbys of over 20 people and some who didn't even show up. The market had spoken, and it was an "aha" moment. The GM capacity was not being met. We had the seats, and people wanted to go. Sounded good. Sounded good to us and also by the staff of the National Park Service.

We made our initial ask for an increase of passengers of 25 each day in February 2013 but were to find out the path of commonsense flexibility in these contracts was not an easy one.

I'm a businessman and would not enter a contract, especially one for 10 years, to someone to manage my property without a tacit or explicit way to adjust the agreement. Things change. Fuel goes up, hurricanes come, BP spills oil, world economies and travels change. No, the National Park Service is not a business, but it is in business and needs to respond accordingly.

The result of our request: After 20 months, it was approved, and, even though everyone assured me it was a good idea, there was just no mechanism to get it done. There was a loss of revenue, and perhaps as many as 10,000 people were denied the opportunity to see one of America's most unique and wonderful places.

In just 7 months since getting permission, we paid the park an additional $117,000. More importantly, the National Park Service missions of public access and asset protection have been better served. And it was all done with the stroke of a pen.

The takeaway is the National Park Service doesn't have to do anything. The parks will continue to be funded at some level of probable diminishing amounts, but the results will be a self-fulfilling prophecy of a downward spiral of failing infrastructure and loss of relevance.

I don't speak for other concessioners, but I think what the National Park Service should do is build commonsense flexibility into these long-term agreements and drive the decisionmaking process down to the lowest level possible. The folks who run the parks know what needs to be done. Give them the responsibility and the authority. It's appropriate to quote Teddy Roosevelt, who said, "Find the right person to do the job, then get out of their way."

Finally, I think that you should incentivize the good efforts of your concessioners and, frankly, your own people with a measurable format of performance and reward those efforts with contract extensions.

Thank you for the opportunity to be stewards of these great assets. Thank you for your kind attention. And thank you for your service.

[Prepared statement of Mr. Belland follows:]

Statement of Christopher Belland, CEO of Historic Tours of America, Inc.
Before the Subcommittee on Interior, Committee on Oversight and Government Reform,
U.S. House of Representatives, On Modernizing the National Park Service
Concessions Program
July 23, 2015

My name is Chris Belland and I am the CEO of Historic Tours of America. Historic Tours of America is a national company headquartered in Key West, Florida and has sightseeing and historic attraction operations in Key West, St. Augustine, Savannah, Washington, Boston and San Diego. We are the largest themed vehicle sightseeing carrier in the United States, hosting approximately 3 million guests each year. Most recently, we were awarded the contract to provide interpretive sightseeing tours for Arlington National Cemetery. In addition to our sightseeing business, we also operate historic attractions including, for the State of Florida, the Truman Little White House which is the only Presidential home in the State of Florida, the Key West Aquarium, the Key West Shipwreck Treasure Museum, the Oldest Jail, the Oldest Store and Potter's Wax Museum, the first wax museum established in the United States in St. Augustine, Florida, as well as the Boston Tea Party Ships and Museum, a $25 million re-creation of Griffin's Wharf celebrating the single most important event leading up to the American Revolution on December 16th, 1773.

My comments for your consideration address our experiences and our ideas for hosting a larger and more diverse number of park visitors well, for using park financial resources effectively and efficiently, and for using the hospitality expertise, promotional talents and people management skills of recognized corporate leaders in the hospitality industry.

Our company has operated in partnership with the founding operators of the high-speed ferry to Dry Tortugas National Park for more than ten years. Together, our partnership, Yankee Freedom III, LLC, competed for and won a new ten-year concessions contract in 2010, becoming the exclusive provider of ferry service to Fort Jefferson and the Dry Tortugas National Park. The contract allowed us to carry 150 passengers daily, providing them with breakfast and lunch, snorkeling gear and introduction to and interpretation about the national park on board our vessel and during tours of the Fort.

As part of our concession proposal, we were required to supply a purpose-built, state of the art high-speed ferry at the cost of approximately $6.5 million with a US Coast Guard certified capacity of 250 passengers. Although prior concessions contracts in the park had allowed two operators each the right to transport 100 passengers to and from the park unit, we became subject to the general management plan maximum capacity of the Dry Tortugas of 350 visitors per day, of which 150 were permitted to arrive by ferry. The rationale for requiring a 250 passenger vessel but imposing a limit of only 150 passengers a day was to provide a more commodious experience and to provide for camping gear of our guests who were going to the island for that purpose.

It became obvious from the beginning that the 350 visitor-per-day cap in the GNP was well in excess of actual visitation – even though we regularly reached our limit of 150 passengers arriving by ferry. The additional visitors were expected to arrive by private vessels and by seaplane. Expense and the remote nature of the Dry Tortugas and visitor preference kept the other two access options well

under projections. In other words, there was unused visitor capacity to allow more Americans and international visitors alike to discover what **USA Today** and others have acclaimed as one of the true treasures of the Florida Keys.

As we began to work more closely with the National Park Service in marketing this unique unit, focusing on a rich array of historic stories ranging from the imprisonment of Dr. Samuel Mudd to visits by Ernest Hemingway and John Audubon, we quickly discovered that many more guests wanted to visit the Dry Tortugas than we were allowed to take. The market had spoken – visitors wanted to experience the Dry Tortugas National Park and preferred our boat over other options.

There were many days when our standby guest list numbered twenty or more – and those on the list arrived early in the morning at our dock in hopes that one of our passengers holding a reservation failed to arrive. We knew many more just gave up and did not even try to go standby. It was against this backdrop of unused capacity and market demand that we petitioned the National Park Service in February 2013 for an amendment to our contract, allowing us to carry an additional 25 guests for a potential total of 175 each day.

Everybody seemed to think it was a good idea, including strong advocates for protection of the park and the local NPS officials. Unfortunately for prospective park visitors, though, we learned that mid-contract revisions to concessions contracts have no easy path. Logic was clearly on the side of at least a trial of a higher number of ferry passengers. First and foremost, we could increase the number of persons having a Dry Tortugas experience substantially – by at least 7500 annually. There were other persuasive factors. Each additional visitor would pay a park entrance fee as well as fees for the ferry ride, which are subject to a sizeable franchise fee – at least $30 in additional park receipts per additional visitor, most of which would be retained in the park for needed repairs and services. The increase in our business would also mean new jobs and new spending in the Key West area for services and supplies.

After more than 20 months, the NPS finally agreed to the increase, and that is what I'd like to highlight. The torturous path of paperwork between the local park and the region and the national office was costly to all parties and was stressful to the relationship between our company and NPS. We can certainly share details about a paper trail that involved a back-and-forth among three levels of agency staff, Interior attorneys, from Everglades to Atlanta to Washington and back. What did not appear to gain consideration was the 10,000+ potential park visitors that could have experienced Dry Tortugas during this period, or the revenue loss to NPS of $250,000 or more. We are not seeking to blame anyone for this unfortunate episode; we ask the help of the agency and the Congress to place more value on the advice of companies like ours dedicated to being a strong and long-term partner in park protection and visitor experiences, especially when local NPS staff endorse such endeavors. We suggest that both the Congress and NPS encourage ways to attract visitors where capacity exists, and to encourage the testing out of changes in operations and services which are based upon solid information about visitor expectations, experiences and preferences.

After just seven months, we can tell you that Dry Totugas has been able to host approximately 4,000+ more appreciative park visitors, and that some $120,000 in additional, direct NPS revenues have been generated -- at least 80% of which will directly benefit the park in which we operate. It was done with the stroke of a pen, with no appreciable additional impact on park resources or staff.

And these benefits are sustainable and will recur year after year. I am also sure it is easy for you to understand that the Dry Tortugas, being 70 miles out in the open waters, is a very difficult area to supply. Resources to care for a facility such as Fort Jefferson, which is one of the largest brick buildings in the western hemisphere, are not abundant in this era of budget cuts. The supplemental monies generated by this action will have a clearly beneficial impact on National Park Service efforts to preserve assets vital to the long term sustainability of this park unit.

Let me reiterate that the National Park Service, at the Park, Regional and National levels, was receptive to our proposal. It was the system that made approval of our request needlessly challenging. I am pleased to say that our working relationship at all levels has been nothing but extraordinary and we look forward to the remainder of our contract being able to provide not only an excellent interpretive service to the Dry Tortugas but also to be able to make a significant contribution to the National Park Service and our country in a financial sense.

In this vein, it is incumbent upon me to tell you that I feel there are substantial opportunities that the National Park Service has immediately available to boost and improve visitation that fall into the same category as I have outlined above but, again, ultimate approvals of changes are very hard to accomplish. I am a businessman and have enjoyed a certain measure of success based on common sense and good financial practices. While I realize the National Park Service is not a business per se, it is in business and its future is likely to depend more than ever on the marketplace and its ability to be relevant to the leisure industry. With the substantial and ongoing budgetary restraints that the NPS is facing, it seems to me that the NPS can, with little effort, recover a larger portion of the costs of its many excellent programs from those directly benefiting from those programs. Recreation and tourism are a trillion dollar industry, and national parks are widely regarded as a top asset of this industry. In other words, the National Park Service can achieve its main missions of asset preservation and public enjoyment… by being more businesslike.

Here is one example. It would make no sense to me as a businessman to put out a Request For Proposals to manage one of my properties and not do two very important things for the organization I selected. First, there would be some mechanism in my agreement to amend the original terms of our agreement when it became evident that such amendments were beneficial not only to the operator but also my asset and to me personally. The NPS, in this regard, should be no different.

Secondly, it makes no sense to me that, at the end of an agreement, a stellar existing operator would have no advantage in a new contract. In the hospitality business, building brand and customer loyalty is a top priority. Together, NPS and its concessioner partners need to focus on this loyalty and preference to stay relevant and attractive in the face of competition for leisure time and spending.

I have enjoyed working with the National Park Service for a number of years now. There is no doubt in my mind that they are a dedicated group of individuals who have nothing but the best intentions as that pertains to the protection of the most extraordinary assets of this country. In this same vein, I believe they are also interested in operators who will provide first class service in both operations and hospitality to the many visitors from this country and around the world who wish to see some of the most unique places on earth. Though I do not speak for the National Park Service,

nor do I speak for any other concession operator but myself, I believe that a small amount of common sense in amending existing contracts would make an immense difference to all concerned.

Finally, I would also ask you to support a results-oriented revision to the NPS concessions program that, when an operator does well and exceeds its obligations, it is accorded a contract extension. In short, good operators should be rewarded for good efforts, just as good employees are encouraged to remain with an agency or business. The costs to NPS in preparing a contract prospectus are very large, as are the costs of proposal evaluation and start-up costs associated with a new concessioner. The costs of the concessioner competition process are steep for concessioners, too, and are many times a barrier to entry.

We are proud to partner with NPS and a variety of other public and private organizations to tackle the greatest needs of the nation. We want Americans to learn about and understand our history and core values. We want Americans to be active outdoors. We want to contribute to preserving special places. Just this summer, we joined in the connection of urban youth to our parks at the Boston Capital Campout with Massachusetts Governor Charlie Baker, and as a result now anticipate much more collaboration with the many park agencies in the Boston area in reaching out to diverse urban, Americans. We were also delighted to again assist the Great Outdoors Day of Service on and near the National Mall, as youth conservation leaders and volunteers served in these special areas.

Thank you for the opportunity to be a steward of one of the most extraordinary and unique places on earth. Thank you for allowing us to share our thoughts on how we can work in cooperation with the National Park Service and other organizations in the tourism and recreation communities to deliver great park experiences to a growing and changing America and to those who come to our nation to visit great places that tell America's stories. And … thank you for your service.

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Mrs. LUMMIS. Thank you, gentlemen and gentlelady.

We will now follow with questions from the members. The chair will recognize herself first for 5 minutes.

Ms. McDowall, have you heard some of these suggestions before from concessioners, the concerns about contracting and lack of contract flexibility and complexity of contracts? And can you respond to those, please?

Ms. MCDOWALL. I think many of the things that these gentlemen have mentioned we have heard from many concessioners on occasion, I think. Over the last number of years, we have worked within the existing law to try to deal with some of these challenges.

I do think that there are some elements of the law, particularly when you look at contract rigidity, that are a result of not just Park Service process but are a result of the law. And I think the Park Service would agree that having more flexibility in the contract models would be of value.

Mrs. LUMMIS. So you would work with the committee and its members to bring about some changes that would augment the flexibility of contracting?

Ms. MCDOWALL. I think the Park Service would be interested in exploring those opportunities.

Mrs. LUMMIS. Thank you very much.

The backlog is pretty significant at some of our park properties. I think, in aggregate, it is over $11 billion.

Again, Ms. McDowall, are there ways in which concessioners could be part of a solution to address the backlog?

Ms. MCDOWALL. Our primary avenue for financing capital improvements for concession-managed assets is leasehold surrender interest.

I do think there is interest on the part of concessioners in doing more capital improvements. I think the difficulty from the Park Service perspective is we are always looking at the financial feasibility of concessions contracts. The way that leasehold surrender interest works, the investment grows over the life of the contract. So, at the end of the contract, the amount that is owed on that contract has to be paid by the next incoming concessioner if another concessioner is chosen.

So the Park Service is very careful about how much LSI it approves on a particular contract, in order to make sure we don't end up in a situation where a contract is—we call it upsidedown, where essentially the revenues that are expected over the life of that contract can't support the burden of the LSI investment that would need to be made by an incoming concessioner.

Mrs. LUMMIS. I would ask the other panelists to respond to that concern about a contract getting upsidedown. Would anyone care to comment on that?

Mr. KLEIN. I would. Alex Klein, Grand Teton Lodge Company and Flagg Ranch.

I agree with the conundrum, but I don't see an obvious fix to it. These are large facilities. They have——

Mrs. LUMMIS. Yeah.

Mr. KLEIN. —significant infrastructure, and they require investment. And it becomes a circular problem. We can't invest in the fa-

cilities because we don't want to increase the LSI in order to make the contracts more competitive, and then that circle continues.

And I think we need to find a way, collectively, to break that cycle. And, from time to time, I think embracing additional LSI may actually be in the best interest of both parties.

Mrs. LUMMIS. Okay.

Anyone else care to comment?

Mr. Belland?

Mr. BELLAND. Yes. Chris Belland, HTA.

In business—and I keep, you know, talking about business and the National Park Service, and I don't think they are exactly enemies or antithetical—you have what is called the return of capital and return on capital. And to get somebody to invest in these properties, they have to be assured of two things: A, they are going to have enough time to amortize those costs; and, B, there are going to be some profits involved to justify the risk.

And I think that comes back to what I said before about rewarding the good efforts of your concessioners with contract extensions and to give them flexibility to change their business model as the contract proceeds.

Mrs. LUMMIS. Mr. Klein, turning specifically to Grand Teton National Park, you speak highly of the National Park Service staff that you deal with.

How important is that relationship in ensuring the successful park operations? And how can it be improved in parks that are not as blessed as Grand Teton?

Mr. KLEIN. Madam Chair, our relationship, I don't think it's unique, but I do take great pride in the relationship that we've had in Grand Teton National Park. I think on both sides we view it as a partnership. We have shared mutual goals. We communicate effectively. You know, from time to time, we may disagree on a certain point, but I think that's a matter of just doing good business.

And, you know, that local relationship, I think, is very important. And I think we have some people in our national park, on the concessions management staff and in administration, including the Superintendent and the Deputy Superintendent, that I would loosely term as progressive in the National Park Service, that they are open to new ideas.

And I documented a few items in my testimony that I think are progressive in the National Park System. We have had some significant success. I would just like to see that grow.

And I think, in some cases, the relationship is not viewed as a partnership. It's viewed somewhat as adversarial and an oversight matter. And I think if we truly do embrace this partnership, I think together we can move forward.

Mrs. LUMMIS. Well, thank you, panel.

The chair provided herself a very generous 5-minute clock. She will do the same with the ranking member. Mrs. Lawrence is recognized for 5 minutes.

Mrs. LAWRENCE. Thank you, Madam Chair.

I have a few questions, but I just want to make the comment, you know, I continuously state that I was previously a mayor of a city, and I use the term often that a pothole does not have an "R"

or "D" on it, it just needs to be fixed. And I like that analogy of our parks do not have R's or D's on them.

I wanted to ask the question—and, Madam Chair, if you would allow me to enter into the record a statement from John Garder, who is the director of budget and appropriations for the National Parks Conservation Association.

Mrs. LUMMIS. Without objection, so ordered.

Mrs. LAWRENCE. I wanted to ask a question of Ms. McDowall.

In the statement from Mr. Garder, he talks about those extenuating circumstances like wildfires, flooding in our national parks and the impact it has on our budget.

Can you talk to me about how that is budgeted for the national parks, and is that a challenge?

Ms. MCDOWALL. How the Park Service covers the cost of those types of events?

Mrs. LAWRENCE. Yes.

Ms. MCDOWALL. One moment.

So we do have emergency authority to deficit-spend. We don't save up for those kinds of events. We don't keep——

Mrs. LAWRENCE. So it is not budgeted.

Ms. MCDOWALL. Right.

Mrs. LAWRENCE. Okay. That is interesting.

Hornblower Cruises operates boat tours to iconic destinations. And if you are the same cruise, I have used it in Niagara Falls. But we have heard complaints that the Park Service has refused to extend the operating hours to these monuments in spite of overwhelming public demand for change.

Mr. MacRae, please tell me more about these issues, and discuss whether your company has requested an extension for your services to these locations. And what has been the National Park Service response?

Mr. MACRAE. So, at the Statue of Liberty, we have just recently had some extension of our operating hours. Generally speaking, the last tickets are sold in midafternoon, in the city that doesn't sleep at all. It's sometimes a staffing question. It's sometimes thought of as a budget question, although the payments for franchise fees will pretty much support any operating hours at that location.

So there has been some movement in that. We had an evening program several years ago that was discontinued but not for lack of demand. So the park has been receptive there to some movement, although, considering how large the opportunity is, it's a glacial pace to expand visitation that way.

Alcatraz, we have had some opportunity to expand shoulder season definitions. We went from having three seasons to having two seasons. We can run 14 cruises a day during the busy season and 10 during the winter. The fact of the matter is Alcatraz is virtually sold out all the time. We could probably have 50 percent more, maybe 100 percent more visitors there than we actually have.

And there's a lot of different reasons. Some, you know, can be overcome through change in programming and change in facilities. I just think, generally speaking, the parks are not as driven to find ways to increase visitation because they don't operate off of that budget.

Mrs. LAWRENCE. Mr. Belland, your company, Historic Tours of America, experienced similar issues, and, if I'm not mistaken, it was stated that it took nearly 2 years to resolve. Can you tell me why it took so long? What was your experience?

Mr. BELLAND. Do we have the rest of the day?

Well, again, this is our first concession, and our experience in working with the parks was rather new to the game. I worked with the local guy at Everglades, Dan Kimball, who is now retired, and, boy, he thought it was a great idea. He said, I'm going to make this my legacy contribution to the Dry Tortugas, because it makes sense.

I mean, as I said before, the general management plan of 350 was never met. There just weren't enough people going out there. We had the capacity, and people wanted to go. So it seemed a very logical thing. But this thing went up to Atlanta, then it went from Atlanta to Washington, then back down to Everglades. And it was back and forth so many times, I've got a whole sheath of documents, you know, of letters and emails going back and forth trying to get this done.

And it was something, as I said before, I think it really should have been delegated to a lower level than Washington, D.C. The people in Atlanta certainly know what to do in this regard. And I can tell you that the folks in Everglades did too. It was just a no-brainer thing. It had no impact on the asset and a minimal impact on staffing, so why not?

Mrs. LAWRENCE. If you will allow me to ask just one more question, Madam Chair.

Ms. McDowall, you have heard the comments made from these two. What has the National Park Service—have you analyzed it? Have you identified it? And is there any movement to change the processing so that we can cut down that turnaround time?

Ms. MCDOWALL. So there are a number of things that the Park Service is doing, particularly for smaller contracts, to try to streamline the request-for-proposal process and the contracting process.

I think when it comes to the process for trying to make changes in services during the life of a contract, the Park Service is trying to be as flexible as possible administratively within the constraints of the law to make changes to services.

I think that the constraint we are operating under is that—and forgive me, I don't have the clause memorized—there are some clauses within the law that talk about the Park Service needing to issue a new prospectus if they are going to expand services or add new services during the life of a contract.

So the Park Service is very careful about where that line is. And I think some of that frustration you hear from concessioners, I think commercial services people in parks share those same frustrations. Ten years, 15, 20 years is a long time on a contract, and things do change, but we don't have a great deal of flexibility to make significant changes during the term of a contract. And part of the back-and-forth is working with the lawyers to determine what is significant.

Mrs. LAWRENCE. Thank you, Madam Chair.

Mrs. LUMMIS. I thank the gentlelady and recognize the gentleman from Alabama, Mr. Palmer, for 5 minutes.

Mr. PALMER. Thank you, Madam Chairlady.

Ms. McDowall, I'm going to ask you a little bit about the backlog that you have in deferred maintenance and some of the infrastructure issues that the Park Service now faces.

What steps is the Park Service taking to address this backlog?

Ms. MCDOWALL. So I think we have done a number of things. I think the work that's been done to get a handle on what the backlog is in the first place was the first significant move, I think.

You're seeing the Park Service now really focus its attention and resources on our high-priority, nontransportation deferred maintenance, those facilities that really are important for serving visitors, and working on ways to direct funding——

Mr. PALMER. Let me ask you——

Ms. MCDOWALL. —to those facilities. Yes?

Mr. PALMER. I'm going to get to some specific things here, maybe even generate some ideas.

But when you say the significant, what would those be? Would it be anything from a visitor facility to a road or a bridge?

Ms. MCDOWALL. So nontransportation are the——

Mr. PALMER. Okay.

Ms. MCDOWALL. —things that I'm focusing on. So things like——

Mr. PALMER. Would that include a ferry?

Ms. MCDOWALL. —visitor centers, bathrooms——

Mr. PALMER. But when you say nontransportation, would that that exclude ferries?

Ms. MCDOWALL. So the Park Service doesn't own many ferries. I think we're talking about buildings, for the most part.

Mr. PALMER. Okay.

Ms. MCDOWALL. Yeah.

Mr. PALMER. All right.

Ms. MCDOWALL. And trails, to a lesser extent.

Mr. PALMER. All right.

One of the things that, looking through the background on this, is the leaseholder surrender interest. Is there a possibility that more private investment could help address some or maybe even a significant portion of the infrastructure improvement needs?

Ms. MCDOWALL. I think in some of the concession-managed assets there is certainly a role for the private sector. I think you see that in some of the longer concessions contracts that we have recently issued and that we're about to issue. There's the large lodging contract at Yellowstone that's 15 years that has a great deal of private investment associated with it.

Mr. PALMER. Okay. Does the Park Service own the lodge, or is that a private——

Ms. MCDOWALL. The Park Service does own the facility.

Mr. PALMER. Is there any possibility that you could have a public-private partnership or a private entity own the lodge?

Ms. MCDOWALL. I don't immediately know the answer to that.

Mr. PALMER. That's one of the things that I would think you might want to consider in addressing some of the backlog. And, again, if you take a look at the leaseholder surrender interest—and we could work out some arrangement where private entities own the facilities, and then the contract or the agreement was structured in such a way that, over the long term, they would be able

to not only recover their investment but earn a profit, it might take some of the burden off of the Park Service.

Mr. MacRae or Mr. Klein or Mr. Belland, do you have any—and this is just in the context of some ideas that might help solve some of these problems and make your job a little bit easier.

Mr. MacRae?

Mr. MACRAE. Mr. Palmer, I could speak to that for a moment.

One of the things that the 1998 act did do is provide for the ability to do some leasing. So, from a practical standpoint, some of the projects and opportunities that require a much longer amortization period than is available under the concession contract could probably best be handled by leasing. And, frankly, it might be a nice bridge between figuring out what the LSI solution is, because you do need a long period of time to amortize some of these investments, and it's really not provided, the capability to do that, within a shorter concession agreement.

So, clearly, the leasing channel is one. And in the Golden Gate National Recreation Area, we have two examples of that. One is the Argonaut Hotel, and one is Cavallo Point. So the Park Service does have assets that can be leased. And probably, with, you know, some urging and some direction, they would probably do more of them.

Mr. PALMER. Well, my perspective is that, when you have a private interest in something and you basically own it, you've got more motivation to invest in it, keep it up. And I think it helps on the concession side. It helps in attracting visitors.

I want to go back to Ms. McDowall on the fees.

The inspector general's office laid out some specific recommendations, some of which you have handled well. Where are you in the process of increasing the fees?

Ms. MCDOWALL. So we have finished, for the most part, the public engagement process that we go through before we make a decision to raise fees. Most parks that did engage in that conversation with the public have decided to raise fees, maybe not quite as much as they had proposed, but many of them are raising fees. I think we started seeing increases back in February. And most parks that were going to raise fees have raised them so far, usually after Memorial Day, at the beginning of the season.

Mr. PALMER. All right.

Ms. MCDOWALL. So we are moving forward.

Mr. PALMER. Well, my time has expired. I would just like to conclude with this, to encourage the Park Service to look at these public-private partnerships going forward as maybe a part of the solution.

Thank you, Madam Chairman.

Mrs. LUMMIS. I thank the gentleman.

And the chair now recognizes the gentleman from Colorado, Mr. Buck, for 5 minutes.

Mr. BUCK. Thank you.

Ms. McDowall, what law are we talking about? You have mentioned "the law" a number of times. Could you tell me a code section, if you have it?

Ms. MCDOWALL. It's the Concessions Management Improvement Act of 1998.

Mr. BUCK. Okay.

And, specifically, you mentioned some of the parts of the law that are constraining you. Can you give me some more details?

Because I think one of the things that we all want to do on this committee is try to help you gain that flexibility, and, if there is a statutory remedy, I think we all want to try to look at that.

Ms. MCDOWALL. So the way that the law lays out the request-for-proposal process, it requires the Park Service to be very detailed at the front end about the services that should be provided and the structure of the contract. So there's not really much of an opportunity for negotiation.

In the private sector, you might—or even in an airport concessions process, they might have a two-part process, where they find qualified bidders, and then they actually negotiate with them to talk about what kinds of services the various offerors might provide.

The Park Service can't really do that under this law. We have to evaluate and decide at the front end what services should be offered. That goes into an RFP. And the bidders have to bid on a contract that's almost completely set in the RFP. There's not much room to maneuver after we select an offeror.

Mr. BUCK. So you have mentioned a contract model. Is it that the FAA has? Or what——

Ms. MCDOWALL. So some of the things or some of the examples of more flexible models would be the types of leases that Mr. MacRae mentioned. Managing agreements are common in the hotel industry.

Neither of those are real options under the concessions law. We do have leasing authority, but it specifically does not allow the Park Service to enter into a lease when a concessions contract is what we should use.

Mr. BUCK. Okay.

Any other areas of flexibility? Obviously, you are dealing with lodging, you are dealing with food services, you are dealing with a number of different areas. I would imagine each of them needs a separate type of flexibility.

Ms. MCDOWALL. Right. They are all very unique. And I think having the ability to mix and match different contract types, change the way the terms are constructed for various business opportunities, would be valuable.

Mr. BUCK. Okay.

Ms. MCDOWALL. We have a one-size-fits-all approach right now.

Mr. BUCK. Who are the best people to talk to at the Park Service to try to deal with developing a different model or looking at different models and trying to apply them?

Ms. MCDOWALL. It would be the Commercial Services Program within the Chief Financial Officer's program of——

Mr. BUCK. And you know those folks well.

Ms. MCDOWALL. Very well.

Mr. BUCK. Okay.

I have no further questions. I yield back.

Mrs. LUMMIS. Well, I thank the gentleman and would ask the panel if they would be willing to entertain a lightning round, where we each get one question and one question only and alternate.

Without objection, we will take that approach, and the chair recognizes herself for one question.

Ms. McDowall, are these contracting—the attorneys that—or people who draft these prospectuses—for example, I have been told, at Denali, they even specify within the prospectus application different prices for soft drinks in different parts of the park. That sounds like micromanagement to such an extreme that you can visualize a 1,600-page contract. You can also visualize a less efficient bidding process when that kind of specificity is included in the prospectus application.

Is that normal, and do all of them have that type of specificity? And doesn't that seem—how can we ferret out that kind of micromanagement from the contracting process and really get down to the type of contracting that would benefit the Park Service as well as the applicants?

Ms. MCDOWALL. So there are things that we are doing to reduce the amount of specificity that's required on those types of things.

There is an approach called core menu, where Washington has been very encouraging for parks and regions who are developing contracts to really only look at a small subset of items on a particular menu, for example. And the Park Service would approve rates on those items, maybe five, six, seven items on a menu, and the rest of the menu items are available for the concessioner to price however they would wish.

Washington does not dictate to every park and every region exactly how they should structure their contract. It's a very decentralized organization. We leave a lot of local discretion to the field.

And so, even though that flexibility is there, we do still have circumstances where I think there is probably more specificity than is required.

Mrs. LUMMIS. Thank you.

Mrs. Lawrence?

Mrs. LAWRENCE. Thank you, Madam Chair.

We have spoken about the centennial coming up. The House is considering an appropriation bill that would increase the Park Service's budget by roughly $50 million this year. That is a good start, but, given the importance of the upcoming centennial year and the substantial funding challenges that the Park Service is facing, is that enough?

So my question to you, Ms. McDowall: What is the Park Service planning to do to make sure our parks are ready for the centennial? And—it was only supposed to be one question. What are you doing, and will you have the funds to do it?

Ms. MCDOWALL. So I think you're right, the $50 million isn't going to get us all the way there. It will certainly help. Raising fees helps. I think having more money available for facilities will help.

And then I think, outside the financial realm, I think there are a lot of—there's a lot of work being done in the Park Service about the kinds of programs that we offer. I think there are certainly things we can do, working with our concessioners, to look at different types of visitor services that could be offered that are the types of services that visitors are expecting in this day and age that will help us be ready for what we hope is a large influx of visitors and different visitors than we've had in the past.

Mrs. LAWRENCE. Thank you.

Mrs. LUMMIS. The chair recognizes Mr. Palmer.

Mr. PALMER. Mr. MacRae, in your testimony, you talked about that park visitation has been unchanged over 25 years despite a 30-percent increase in the population of the United States. And you raised some concerns that, if you deducted the number of visitors to the World War II Memorial and the newer monuments, that, really, park visitation is down below 1987 numbers. Can you elaborate on that a little bit?

Mr. MACRAE. The population of the country has grown significantly over time. The visitation to the parks have not grown over that same period.

If you think of the parks as, you know, 400 units that host 300 million visitors a year, a $3 billion budget—and there's not a chief marketing officer. The word "marketing" in the parks, frankly, until Director Jarvis came along and was willing to use it, you know, in public, was a verboten word there. "Promotion," of course, is in the act, so they recognized the need for promotion. But the parks have an amazing brand, and they have amazing assets, and they have a huge number of visitors that want to come but don't know much about it. So there's some great opportunities to join with the National Parks Promotion Council and the National Park Foundation and BrandUSA to promote the parks.

And, frankly, the visitation within the parks hasn't reflected the change in our population either. So there's some work that needs to be done there, and the Park Service, I think, has recognized that. And the centennial has given them some opportunity to focus on it and try to find a way forward there. And we really encourage that and support that, as concessioners.

Within our parks, of course, we go out and promote the parks where we provide services, but that still leaves 300 parks that don't have anybody promoting them, so—huge opportunity there, in our view.

Mr. PALMER. It sounds like we need a major marketing plan. Thank you.

Thank you, Madam Chair.

Mrs. LUMMIS. Thank you, Mr. Palmer.

Before I close the hearing, I want to give each of our panelists one last question and one last chance to close. And so I like to close hearings by asking any of the panelists to respond to a question you wish you would have been asked. So the chair will recognize each panelist for kind of a closing statement.

Mr. Belland, you are recognized first.

Mr. BELLAND. Well, that's interesting.

You know, it's hard to sit here in this limited amount of time and talk about all the things that we have experienced as concessioners. I want to reiterate the comments of my fellow panelists by saying that we work with an extraordinary group of people who are absolutely dedicated to the prospects of the National Park Service mission.

They, as much as we, have our hands tied. Listening to Ms. McDowall's comments about being able to change contracts, you know, to me, put in a more simple way, which is what I was confronted with—and it was never said to me—was that, after you get

a contract, after you win the award, they really can't negotiate with you.

And the reason for that is that the National Park Service is wary—I won't use the word "afraid" because I don't think you're afraid of anything—but they're wary of another bidder coming back and saying, oh, well, if you'd let me do that, you know, I could have—blah, blah, blah. And they're afraid of those lawsuits, and I understand that.

But I think there has to be a modicum of common sense brought to the National Park Service in a businesslike fashion that will allow it to be flexible over these contracts. Because, as I said, things change, big things change, and you have to be able to change direction as you need to.

And, again, you have partners working for you, with you, that are willing to toe the line and do the right thing. I mean, it's in all of our best interests to promote the parks, provide the very best service we can. Because we are facing right now, as Congressman Palmer said, we are facing a crisis of attendance, and we have got to find a way to make the National Park Service relevant in this technological age. Because they say, if a child does not go camping by the time he is 16, he will never go camping in his life. Now, that's not the generation that I grew up with. And I grew up in the age of no television, and now every kid walks around with a television in his hand.

And so we have to seek ways, I think, to your point—I think the question is, what can we do together to make the National Park Service relevant for the next generation.

Mrs. LUMMIS. Thank you very much.

You are absolutely right about contracting. When I was State treasurer, we would issue RFPs and award external managers for money. And then, if there were substantial contract revisions, we would have disgruntled bidders after us. So you are absolutely right; it is difficult for government when you are dealing with big contracts like that.

Thank you very much.

Mr. Klein?

Mr. KLEIN. Madam Chair, thank you for the opportunity once again.

And thank you, Mr. Belland, for giving me time to think of a question I would have been asked.

Mr. BELLAND. You're welcome.

Mr. KLEIN. You know, I think there's many questions. And, to Mr. Belland's point, you know, we haven't had the opportunity to speak at length about the many issues that I think we do need to address over time.

But, representing Grand Teton Lodge Company, a company that was started by John D. Rockefeller, Jr., you know, really just prior to the formation of the park itself, the same individual that donated the land, I think about whether or not these wonderful assets that, Madam Chair, you've enjoyed on many occasions—Jenny Lake Lodge, Jackson Lake Lodge, Colter Bay Village—you know, whether that type of ingenuity and those types of visitor accommodations and fine dining and the wonderful trips that we provide to people on the Snake River and the wonderful cookout sites we

have on Oak Island, were the rules the same in 1955 when these lodges were being built and put together and the visitor services determined, unfortunately I think in today's day and age that would not have happened, and we'd be left with a park that didn't have these facilities that really enhance the visitor experience.

To stay in a room at Jackson Lake Lodge that has a view of the Tetons is a once-in-a-lifetime experience. To float on the Snake River on one of our float trips is just an unbelievable way to see wildlife in its natural habitat. And I think, unfortunately, with the current process, that type of ingenuity and new services and new facilities really aren't feasible and possible today.

Thank you once again.

Mrs. LUMMIS. Thank you. And I never tire of that visitor experience. I have been doing it since I was a little girl and hope to, God willing, be able to do it until I am no longer around.

Thank you, Mr. Klein.

Mr. MacRae?

Mr. MACRAE. Thank you, Madam Chairman.

I would say a simple way to think about it is, if you put the folks that are responsible for preserving thousands-and-thousands-of-year-old trees and hundreds-and-hundreds-of-year-old structures into the job of preserving the contracting system in the National Park Service, you probably won't get it modernized.

Getting business folks in that have some of that background and training, which they have been doing—so there's some great movement in that area. You know, it's a big ship with a small rudder, and you have to turn that rudder sooner and faster.

And I believe the Park Service recognizes many of these challenges. And, frankly, if the shackles associated with either their culture or the laws, the things that are preventing them from moving forward, were taken off, I think the progress would be amazing.

So, great opportunities ahead. And I think the concessioners certainly want to be a part of that and are, you know, looking at every possibility to find ways to collaborate with the National Park Service to do that.

Thank you.

Mrs. LUMMIS. Thank you, Mr. MacRae.

And, with all eyes on the Park Service for the next year, as it celebrates its 100th, it really is an opportunity to address some of these issues, while we are all acknowledging the great pride that we have in the National Park Service.

Ms. McDowall, you are our final speaker today.

Ms. MCDOWALL. Thank you.

I think, just in general, the Park Service, of course, is interested in doing anything we can to do better at accomplishing our primary mission, which is meeting visitor needs and protecting resources.

And, to follow up on Mr. MacRae's point, I think there are a lot of things the Park Service can do and is doing to improve business acumen within the Park Service, by bringing in new staff, by better training for the ones that exist, both to better manage parks and to be better partners with our private-sector contractors.

And I would also be remiss if I did not mention a question that I wish I'd been asked, was what marketing campaigns is the Park Service running in order to prepare for its next century. And I for-

got to mention our Find Your Park campaign that has been running with the National Park Foundation, which is a major marketing and outreach push to invite new members of the American public to come to parks. And I think we're hoping that that effort bears a lot of fruit.

Thank you.

Mrs. LUMMIS. I want to thank Mrs. Lawrence, Mr. Palmer, and other members of the committee. And I want to thank our panelists and guests for being here today and for sharing your experiences and ideas with us.

I would also like to enter into the record statements from the following organizations: David Woodside, president of the Acadia Corporation; John King, regional vice president of Forever Resorts; Pamela Pitts, secretary of the California Parks Company; Tim Rout, CEO of Dyno Ventures, Forever Resorts, Gettysburg Tours, and TRF Concession Specialists of Florida; and John Garder, director of budget and appropriations at the National Park Conservation Association.

Without objection, so ordered.

Mrs. LUMMIS. Again, thank you, witnesses, for taking the time to appear before us today. This hearing was one of the more enjoyable and enlightening and caused us to think about some opportunities legislatively and with regard to our stewardship of our great National Park System. So thank you kindly.

If there is no further business, without objection, the subcommittee stands adjourned.

[Whereupon, at 10:17 a.m., the subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

Statement of John Garder,
Director, Budget and Appropriations
National Parks Conservation Association
To Be Submitted for the Record
For the Interior Subcommittee of the House Committee on Oversight and Government Reform
Hearing on Modernizing the National Park Service Concession Program
July 23, 2015

Chairwoman Lummis, Ranking Member Lawrence and members of the subcommittee, I am John Garder, Director of Budget and Appropriations at the National Parks Conservation Association (NPCA). On behalf of our more than one million members and supporters across the country, I thank you for the opportunity to submit this testimony in regard to this hearing on National Park Service concessions. Founded in 1919, NPCA is the leading, independent, private citizen voice in support of promoting, protecting and enhancing America's national parks for present and future generations.

Concession fees, recreational fees, private donations and other sources of funding are important for the maintenance of our nation's crown jewels. However, NPCA strongly believes that visitor services, including concessions, benefit from a well-staffed and well-managed National Park Service. Congress has not matched the responsibility and care required to best enhance the National Park System and provide the best experiences to visitors. Most critical for the fiscal well-being of the National Park System are the need for congressional appropriations and increased funding for park roads and other transportation infrastructure through reauthorization of the transportation law.

As the National Park Service prepares for its Centennial year in 2016, the National Park System is understaffed and requires repair to its infrastructure. The National Park System suffers from an annual operations shortfall that prevents needed protection, interpretation and maintenance; the deferred maintenance backlog has grown to $11.5 billion; and important land acquisition projects have gone unfunded, threatening incompatible development within the borders of our national parks.

The Federal Lands Subcommittee of the House Committee on Natural Resources is also holding a hearing today, on "New and Innovative Ideas for the Next Century of Our National Parks." For that hearing, NPCA is outlining several concepts deserving of congressional attention that could help supplement appropriated funding for our national parks; it is important now more than ever for Congress to seriously examine these concepts. However, a more comprehensive solution is

needed because vastly insufficient resources pose a fundamental threat to the well-being of our nation's parks, as well as to the enjoyment of park visitors and the health of local economies that depend on the quality of their experience. Appropriated funding and transportation funding must be restored and increased to meet the bulk of national park funding needs.

Fiscal Year 2016:

We are grateful that both the House and Senate Appropriations Subcommittees on Interior, Environment and Related Agencies are seeking modest increases for the National Park Service in FY16. However, these bills fall far short of the President's request and the more robust funding needs of our parks, particularly as they prepare for their Centennial year.

The Interior appropriations 302(b) suballocation for FY16 is vastly insufficient to allow appropriators to adequately invest in our national parks. We strongly urge Congress to come together to craft and agree to a budget deal that will replace the sequester. We would then ask that Congress build on that success by restoring funding for the National Park Service to, at a minimum, the levels proposed in the Administration's budget.

Another major constraint on the Interior allocation is the need to fund wildfire suppression. The cost of wildfire suppression has increased due to several factors, and the inability of annual appropriations to meet the need has led to a cycle of the US Forest Service and the Department of the Interior borrowing from nonfire accounts, threatening important activities needed to ensure the health of forests and recreational opportunities, among other impacts. Repaying those accounts the following fiscal year has had a damaging impact on the Interior allocation, preventing other needed investments, such as national parks. We urge passage of the Wildfire Disaster Funding Act, which would fund the most catastrophic one to two percent of wildfires through an emergency account similar to the funding mechanism for other natural disasters such as floods and hurricanes. The bill would offer many benefits to address the wildfire funding problem, including relieving the financial burden of these huge costs on an already constrained Interior appropriations suballocation.

The funding needs for the National Park System are significant.

National Park System Funding Needs:

Operations funding:

Operations funding provides for the operation of our national parks, including park rangers to provide interpretation and day-to-day maintenance; cultural resource experts to protect and restore historic resources; biologists to ensure the health of wildlife and ecosystems; air and water quality experts; and other staff. The FY13 sequester mandated a 6% cut to all park accounts including operations, which had a tremendously damaging effect, leading to approximately 1,900 fewer rangers and other staff in parks, park facilities opening later and/or closing earlier in the day or the season, and other damaging impacts. These cuts threatened the protection of park resources, the quality of the visiting experience, and the health of local economies that depend on park visitors.

Unfortunately the damage to park operations has not been limited to the FY13 sequester, as the account has been cut or insufficiently restored over the last several years. National Park Service's operations funding is down 7% ($178 million) in today's dollars from where it was only five years ago, which has led to a reduction in rangers and other staff to educate visitors and protect resources. There are currently at least 410 rangers and other staff (measured in FTEs) less than there were in FY10. The President's budget requests the return of those staff and a modest increase over that for a total increase of 471 FTEs over FY15.

The deferred maintenance backlog:

Non-transportation funding needs:

Due to insufficient funding, the National Park Service deferred maintenance backlog has grown to $11.5 billion, with roughly half of that backlog comprised of park assets not related to transportation.

The decline in park operations has led to insufficient day-to-day maintenance that prevents projects from being added to the backlog. Restoring operations funding to more adequate levels would help address some of this problem.

The non-roads portion of the backlog has continued to grow in large part due to a steady decline in construction funding that provides for major projects. The National Park Service's construction budget has declined by 62% ($230 million) over the last decade in today's dollars. It should be no surprise that over time, this portion of the backlog has grown to nearly $6 billion.

The President's FY16 budget requests restoring $113 million to the construction account, essentially restoring the account to FY10 levels after controlling for inflation, but not by any means returning the account to the levels of a decade ago. This investment would address some of the most critically-needed infrastructure projects to meet basic visitor health and safety standards, such as replacing wiring in the historic Many Glacier Hotel in Glacier National Park and addressing aging wastewater infrastructure at Yellowstone National Park, among other needed projects.

Transportation funding needs:

The backlog related to roads, bridges and other transportation infrastructure has grown to $5.6 billion largely because of insufficient funding through reauthorization of the federal transportation law.

Currently:

- 40% of 5,500 miles/paved and 4,100 miles/unpaved park roads are in poor to fair condition;
- 42 of the system's 1,442 bridges are deficient, e.g. Memorial Bridge over the Potomac River. Many more are in the second half of their service lives and will require renovation soon;

- Many park transit systems are operating with aging equipment that will need to be replaced in the coming years — 44 systems provide critical access to National Park Service sites not otherwise accessible to the public.

Roads, bridges, and other transportation facilities located or operating in national parks are federal facilities. Congress traditionally has supported the building, operation, maintenance, and improvement of these facilities with funds from the Highway Trust Fund.

As Congress works to reauthorize the federal transportation law, or MAP-21, we urge increased funding for both routine projects as well as for "mega-projects." The National Park Service currently receives a dedicated $240 million through the Federal Lands Transportation Program (FLTP) within MAP-21. The National Park Service estimates that it needs more than four times the current amount per year through 2024 to restore its transportation systems to good condition and to meet growing visitor access needs. We ask that the guaranteed allocation to national parks be increased from $240 million to at least $365 million the first year with progressive increases until the deferred maintenance backlog is adequately addressed.

The costs of more than a dozen road, bridge, and alternative transportation projects in the national parks exceeds the capacity of the FLTP to finance. For example, the renovation of Memorial Bridge leading to Arlington National Cemetery and the Arlington House Memorial is estimated to cost upwards of $240 million - the equivalent of the entire allocation the National Park Service receives from the FLTP in one year. We ask that additional funds are dedicated to address the mega project backlog in the parks.

Land Acquisition Funding Needs:

Land acquisition through the Land and Water Conservation fund (LWCF) has been critical in preventing incompatible development within the borders of our national parks, and in adjacent parcels with nationally significant resources within congressionally designated boundaries. Funds allow the National Park Service and other land management agencies to purchase parcels from willing sellers to prevent development and ensure more effective and efficient management.

The acquisition of inholdings is directly related to better managing the places in which our nation already has made a significant investment. LWCF boosts public access and the recreation economy; fosters more efficient land management, and can reduce administrative and management costs; including the threats of damaging wildfire and invasive species introduction.

Unfortunately, the program has been vastly underfunded. LWCF funding for National Park Service federal land acquisition has declined from $86 million in FY10 to $51 million in FY15, a decline of more than 40%. Investments across the LWCF and related programs have fallen far short of the fully authorized level of $900 million.

At a minimum, we request an increased appropriated investment in this program and that it be reauthorized, as its authorization is set to expire at the end of this fiscal year. H.R. 1814/S. 338 seeks permanent reauthorization of LWCF and should be supported.

We urge more robust support, however, through full and dedicated funding that would allow for a dependable investment for this program each year through a mandatory funding stream, as requested by this Administration. Though there is not yet a companion bill in the House, S. 890 seeks permanent reauthorization and full funding for this important program, and should be supported.

Support for Supplemental Funding:

NPCA urges support for efforts to supplement traditional federal funding streams with additional sources.

There are two immediate opportunities to support supplemental funding:

- Park fees, authorized through the Federal Lands Recreation Enhancement Act. We urge reauthorization of this important program that allows the National Park Service to retain more than $180 million annually in needed fees. We are grateful for the recent pattern of temporary reauthorization of this program and hope we will see an effort to move forward with a more long-term reauthorization.

- The Centennial Challenge, which leverages private funds with a federal match for signature national park projects. We support the President's requested appropriated increase of $40 million for this program in FY16 as part of the National Park Service budget proposal. The President's budget also supports mandatory funding for this program, and NPCA is currently seeking legislation that would support this concept that we hope would receive bipartisan support.

Additional information on our supplemental funding advocacy can be found at http://www.npca.org/assets/pdf/Park-Funding-Proposals.pdf. Details can be found both in the testimony of NPCA Senior Vice President of Government Affairs Craig Obey for the aforementioned July 23 House Natural Resources hearing, and in the associated Bipartisan Policy Center white papers on supplemental park funding concepts that are linked at the above web page.

Conclusion:

The 2016 Centennial of the National Park Service is expected to bring a surge in visitation due to a public relations campaign to raise awareness, as well as a series of events at parks across the country to celebrate this historic occasion. We are concerned that those visitors will arrive to insufficient rangers to greet and guide them and engage them in visitor programs, and that they will arrive to crumbling facilities in disrepair.

Alternatively, the Centennial provides an historic opportunity to provide more adequate funding for our national parks. A robust investment can ensure the protection of our national treasures for the next hundred years and beyond, as well as interpretive opportunities that allow American families to learn about and celebrate our natural and cultural heritage.

Again, we urge:

- A budget deal to replace sequestration that can allow for, at a minimum, the President's request for $3.048 billion in appropriated funding for the National Park System;
- Support for the Wildfire Disaster Funding Act to fund catastrophic wildfires like other natural disasters and relieve a constrained Interior appropriations allocation;
- More robust funding through the Federal Land Transportation Program and to address the mega projects for national park transportation infrastructure;
- Reauthorization and increased, permanent funding for the Land and Water Conservation Fund;
- And consideration of alternative funding mechanisms, such as support for the Centennial Challenge and fee authority.

More information about funding needs for the National Park System, supplemental funding concepts and the enormous economic importance of our national parks can be found at http://www.npca.org/protecting-our-parks/park-funding/park-funding.html.

Thank you again for the opportunity to submit this testimony and for your attention to the needs of America's National Park System.

Statement of David B. Woodside, President of the Acadia Corporation
Before the Subcommittee on Interior, Committee on Oversight and Government Reform,
U.S. House of Representatives
On Modernizing the National Park Service Concessions Program
July 23, 2015

Mr. Chairman and Members, the Acadia Corporation is pleased to offer this testimony regarding ways to continue and improve the tradition of great visitor experiences and telling of park stories through a partnership between concessioners and the National Park Service. My name is David B. Woodside and I serve as President of my organization. The Acadia Corporation served as a concessioner in Acadia National Park for eighty (80) years from 1933 to 2013, serving some 500,000 visitors annually by offering traditional food service at the Jordan Pond House restaurant as well as snacks, beverages, and retail merchandise in three locations in Acadia National Park. Despite very limited operations in our early years, the Acadia Corporation served well over four million meals and provided retail services to over three million park visitors during our tenure.

Our comments address our experiences and our ideas for hosting more and more diverse park visitors well, for using park financial resources effectively and efficiently, and for using the hospitality expertise and extensive local park knowledge offered by locally based concessioners.

The passage of the 1998 Concessions Act created a new competitive process for the award of all concessions contracts with gross revenues in excess of $500,000. In 2001, the Acadia Corporation successfully competed against several bidders for a new 10-year contract. In 2012, we again competed for a new 10-year contract. On September 28, 2013, 10 months after submitting our proposal, we were informed that the contract had been awarded to Dawnland, LLC, a subsidiary of the New Mexico based Ortega Family Enterprises.

Responding to a NPS contract prospectus is an extremely time-consuming and costly process, particularly for smaller, single-park operators. I began work on our response during 2011, over a full year in advance of the July 2012 prospectus release. Over 2500 hours of company-management hours were spent on our prospectus development. In addition, we utilized professional assistance in developing and producing our proposal. In total, our out-of-pocket cost for our proposal exceeded $90,000 excluding management salaries.

We went into the contract competition believing we had an excellent prospect of retaining the contract. While NPS evaluations only rate concessioners as satisfactory or unsatisfactory, in our recent evaluation we had been rated as "one of the best concessioners in the National Park Service" by our park superintendent. Our visitor comments rated us in the 90th plus percentile as good or excellent in food and service. We met or exceeded all contract requirements and maintained excellent relations with park management for 80 years. Lastly, we brought decades of experience at operating a restaurant that routinely served in excess of 2,000 visitors per day and operated high-volume retail operations in multiple park locations. In contrast, the successful bidder brought only three years of fine-dining experience, neither of which had served even 1,000 visitors in a day, and very limited experience in the logistics of operating multiple retail operations within a park location.

One could easily jump to the conclusion that we might have been complacent in our proposal, failing to respond to new contract requirements, offering little or no innovation, and offering a significantly lower fee. As referenced above, we expended extensive time, effort, and expense to develop our proposal. Our prospectus response offered over 100 new innovations to address the operational and environmental issues presented in the new contract. Our fee offering was significantly higher than the contract minimum. While the details of competing proposals are not divulged, the following information obtained from NPS records suggests our financial offering was superior:

2012 – Acadia Corporation; Total Sales $6,032,172; Franchise Fee $475,581; Fee Percentage 7.88%

2013 – Acadia Corporation; Total Sales $5,601,411; Franchise Fee $442,879; Fee Percentage 7.91%

(Sales reduction in 2013 due to the delayed spring opening and Government shutdown, Oct 1-20)

2014 – Dawnland, LLC; Total Sales $5,756,757; Franchise Fee $437,891; Fee Percentage 7.61%

In its first year of operation, despite significant menu price increases, compared with our last full season of operation Dawnland generated over $250,000 less in sales, paid the government over $35,000 less in fees and paid a lower percentage of their revenues to the government.

So what compelled NPS to select Dawnland, LLC? Under the current system, virtually no reasons are given for selection of a particular proposal. In a letter from NPS Director Jon Jarvis to Maine Senators Collins and King, he summarized the proposal review panel decision by succinctly stating, "Dawnland, LLC's proposal received the highest cumulative point score." As the long-time incumbent and as one who had spent endless hours developing our proposal, the only meaningful feedback I was able to obtain was by submitting a FOIA request to obtain a copy of the Dawnland contract. The contract, which was amended from the draft included in the prospectus, added additional provisions presumably from Dawnland's winning proposal. Ultimately, after spending over a year of our company's time and almost $100,000 in costs, we were unable to obtain any meaningful feedback, receiving only thanks for our many years of service and wishes for good luck in the future.

That future is not a promising one for small, single-park operators such as the Acadia Corporation. I have been left to ponder what advice I would give to another small, single-park concessioner facing the decision of whether to compete for a new contract. More importantly, what will I advise our company when the Acadia contract comes up for bid in eight years? Absent any significant changes in concessions contracting, I would consider investing the time and resources necessary to compete to be a highly speculative investment. Absent congressional action, national park concessions are destined to be left to companies large enough to have personnel dedicated to proposal development and centralized management offering a homogenous, mediocre service lacking the distinctiveness befitting America's unique national parks.

I would call upon Congress and the National Park Service to develop a system that truly recognizes outstanding concession operators. Such a system would go beyond the black-and-white rating system of satisfactory or unsatisfactory and develop the means to truly recognize outstanding

operators. The selection system also needs to fully recognize and value the input of local park management in making concessioner selections for local parks. Who is better qualified to evaluate the performance of a company than those park managers that have worked with that company on a daily basis?

It is critical to require a high standard of service and quality for park concessioners, but the heritage aspect of local concession management should play a significant role in the concession contract decision as well. A single-park concession with such a long history of service in support of a unique tradition cannot be valued entirely by balance sheets.

I would also encourage NPS to be more transparent with its concession awards. A fair process should be more open to public scrutiny, with restrictions only on information that is truly proprietary.

Ultimately, Acadia's visitors are the ones who have lost the most in the transition of concession operators. Many unsuspecting visitors now pay higher prices for a food service that visitors suggest is of lower quality than in the past. In addition, many of the unique, time-honored Jordan Pond traditions have disappeared as virtually hundreds of years of experience have been lost in the transition. Additionally, the local park has lost, as absentee management has generated less in fees while creating new park-management issues. Local nonprofits have experienced a loss in financial support and volunteers and the local and larger Maine community have experienced a loss of jobs as concessions management has been moved out of state and purchases of local crafts and foods have diminished in favor of national contracts. Wherever possible, national park visitors deserve goods and services unique to the distinctive character of each individual park. I call upon Congress and the National Park Service to develop a system that respects the role that locally owned and operated concessions can play in enhancing visitor services in our national parks.

I thank you for allowing me to share my thoughts on how we can work in cooperation with the National Park Service and other organizations in the tourism and recreation communities to deliver great park experiences to a growing and changing America and to those who come to our nation to visit great places that tell America's stories.

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Statement of John King, Regional Vice President, Forever Resorts
Before the Subcommittee on Interior, Committee on Oversight and Government Reform
U.S. House of Representatives on Modernizing the National Park Service Concessions Program
July 23, 2015

Mr. Chairman and Members, I have worked for concession operations in National Parks for the past 30 years, and specifically for Signal Mountain Lodge (a Forever Resort) in Grand Teton National Park for the past 27 years, and for Scenic Safaris (another Forever Resort) in Yellowstone National Park during the winter for the past five years. We are pleased to be able to offer testimony regarding ways in which we, as concessioners, in partnership with the National Park Service, can improve visitor services and experiences.

Over the years at Signal Mountain Lodge, we have had a great partnership relationship with the National Park Service. For instance, to meet changing needs and requests from visitors, we have worked with the National Park Service to take over existing campgrounds and provide necessary staffing that has helped not only to give visitors better experiences, but also to manage and patrol camp sites and educate visitors regarding bear awareness with great success. With our new concession contract, we have also worked with the National Park Service to find innovative solutions to provide new services for visitors such as constructing a laundry and shower facility without increasing Leasehold Surrender Interest. This service has been needed and requested by visitors for years. In fact, it was our number-one complaint for the entire property. The success of adding these facilities for visitors has been phenomenal.

In looking toward the future, we hope that the National Park Service will become even more receptive to increasing visitor service where it is needed, and where it makes sense, in a timely manner while at the same time, always protecting the National Parks' natural and cultural resources. Prospectuses and contracts could be improved by giving concessioners a credit of some sort or other innovative rewards for making capital investments that do not contribute to Leasehold Surrender Interest. Longer contracts would also allow concessioners to make larger capital investments that could be recovered by the end of the concession contract. And, finally, rewarding excellent concessioners in some way for being outstanding partners with the National Park Service and for providing outstanding visitor services with extra point(s) given in the re-bid prospectus process, or other innovative method, would help to solidify longevity and stability for good concessioners.

In closing, I want to say it has always been a pleasure working with the National Park Service during my hospitality career. I appreciate the entire Business Resource Team we work with in Grand Teton National Park. I feel we work together as a team to tackle issues, and improve the visitor experience. I also want to commend the superintendent and his team in Yellowstone

National Park for finalizing the new Winter Use Plan, which was a resounding success during our first year (this past winter) of the new concession contract term.

We look forward to partnering with the National Park Service to continue to find innovative ways to improve visitor services, protect Park resources, and providing a financially sustainable business model for the concessioner. Thanks so much for your consideration of this testimony.

John King
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Statement of Pamela Koeberer Pitts, Secretary, The California Parks Company
Before the Subcommittee on Interior, Committee on Oversight and Government Reform,
U.S. House of Representatives
On Modernizing the National Park Service Concessions Program
July 23, 2015

Mr. Chairman and Members, The California Parks Company is pleased to offer this testimony regarding ways to continue and improve the tradition of great visitor experiences and telling of park stories through a partnership between concessioners and the National Park Service. My name is Pamela Koeberer Pitts and I serve as Secretary of my organization. The California Parks Company provides hospitality management services in three State Parks (Angel Island and Big Basin in California and Silver Falls in Oregon), five Water Districts (Metropolitan Water District, East Bay Municipal Utility District, Contra Costa Water District, Lake Hemet Water District, and Vail Lake), two Regional Parks (Lake Chabot and Los Trampas), three County Parks (Lake Gregory - San Bernardino County, Fee Collection - Santa Clara County, and Lake Nacimiento/San Antonio - Monterey County), one Fee Collection Operation (Death Valley National Park), one City Retail unit (Happy Hollow Park & Zoo for the City of San Jose), one USDA contract for campgrounds and launch ramps at Shasta/Trinity Lakes, and the concession at Lassen Volcanic National Park since 1977. In the continual operation of our business for almost 40 years, we have offered outstanding customer service to millions of visitors.

Our comments reflect our years of experience in the hospitality business in diverse concession operations and our ideas for enhancing the park visitor experience and using park financial resources more effectively and efficiently:

- Level of Oversight: No other agency that we work with micro-manages us to the level of the National Park Service (NPS). Health inspections, fair pricing, property management, and public safety are the concern of all agencies but it is only the NPS that oversees our business practices on such a minute and frequent level. We expect and respect the oversight but, once it has been confirmed that we are meeting agency expectations, a yearly inspection should suffice.
- Price-Approval Process: The price-approval process within the NPS is cumbersome and slow. We often are behind the curve with our price structure on accommodations due to the NPS time constraints and process. We do not experience this situation with other agencies.
- Rating System: The NPS is the only agency we deal with that does not give a rating level above "satisfactory" no matter how outstanding performance may be. Above average evaluations (which we get at all other operations) for outstanding performance are not recognized; however, an unsatisfactory rating on an NPS evaluation can have major repercussions. In the California State Parks System, for example, a rating of 90 or above given three years prior to an award of an RFP is given bonus points in the bid submittal.
- RFP Costs: Small operators are forced to spend disproportionate dollars to respond to prospectuses that are better suited to bigger companies doing business in many national parks. The cost to our company to rebid Lassen (after being the incumbent there for 30 years) was $50,000, a VERY substantial cost to a small concessioner. Congress with the passage of the 1998 Concessions Management Improvement Act has unintentionally left companies like ours very vulnerable. It is a real question whether our type of "family-

focused" business is likely to survive in this now very competitive market. We bid proposals on a continual basis; none are as difficult or costly to prepare.

- Capital Requests in RFPs: The NPS has lost sight in recent RFPs of the capital demands put upon the concessioner compared to the length of contracts. In addition, the NPS often listens to high-priced consultant's suggestions instead of listening to the people that know the operations. Having operated Lassen concessions for 30 years before the Lassen RFP was issued in 2008, we were well aware of the request by visitors for more substantial lodging in the park. We were vocal in arguing that 21st Century campground users want more than a plain campsite and suggested the idea of camper cabins being installed in the park to be operated by the concessioner. We were pleased to see the inclusion in the RFP of 20 camper cabins but realized that it would be impossible to recoup the capital investment in a 10-year contract! The lack of consideration given by the NPS and their consultants to the concept of "the opportunity to make a profit" resulted in no one bidding on the contract. The RFP was revamped and reissued with the NPS paying for the cabins and the concessioner operating them. If thought had been given to issuance of a longer contract with competitive pricing, the concessioner would have been willing to pay for the camper cabins, which would have resulted in a more realistic cost for the project as well as a saving of taxpayers' money.

Thank you for allowing us to share our thoughts on how we can work in better cooperation with the National Park Service to deliver great park experiences to a growing and changing America and to those who come to our nation to visit great places that tell America's stories.

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Statement of Tim Rout, CEO, Dyno Ventures, LLC
Before the Subcommittee on Interior, Committee on Oversight and Government Reform,
U.S. House of Representatives
On Modernizing the National Park Service Concessions Program
July 23, 2015

Mr. Chairman and Members, Dyno Ventures is pleased to offer this testimony regarding ways to continue and improve the tradition of great visitor experiences and telling of park stories through a partnership between concessioners and the National Park Service. My name is Tim Rout and I serve as CEO of my organization. My team, originally under the Endeka Group entity, developed, implemented and operated all Wi-Fi and Internet-TV concessions on military bases for the U.S. Marine Corps, U.S. Army, U.S. Air Force, Department of Homeland Security and the FBI Academy. That innovative global project was made possible through partnerships with non-appropriated fund instrumentalities (NAFIs), such as Marine Corps Community Services (MCCS) and the Army Air Force Exchange Service (AAFES). The project was entirely funded with over $90 million from private investors, and required zero U.S. government funding. Our team developed innovative broadband technologies that today allow hundreds of thousands of service members to roam seamlessly across military bases, worldwide, with their wireless devices. They are able to use the same broadband wireless Internet/TV service plan at all remote locations, at half the price of competing services. The NAFI partners have realized millions of dollars in revenue sharing from this service, allowing them to continue providing critical morale programs in an environment of decreasing appropriated funding (APF) budgets. The NAFI model was truly a win-win-win for service members, the military and our private investors.

For over 100 years the stewards of our public lands have walked a fine line between preserving natural wonders for all Americans and providing the kinds of services that enable access to, and enjoyment of, those lands. Our comments address our experiences and our ideas for attracting a diverse range of visitors, for using park financial resources effectively and efficiently, and for using the technical and management skills of companies like mine.

Our suggestions for improving services on public lands are as follows:

(1) Each land management agency should establish a non-appropriated fund instrumentality (NAFI). NAFI organizations are entirely self-funded, and are tasked with partnering with commercial vendors of products and services on public lands. They do not operate under the Federal Acquisition Regulations (FAR), but use the FAR as a guideline for commercial contracting operations. Establishment of NAFIs for the National Park Service, U.S. Forest Service and the U.S. Army Corps of Engineers would greatly enhance the quality and quantity of services available to visitors to public lands and, therefore, visitation. Furthermore, it would produce significant new non-appropriated funding for other public land maintenance operations, just as it has for MCCS and AAFES. One of the first steps for a new NAFI should be to execute a comprehensive marketing survey of visitors to public land, leveraging information about their demographics, and their expectations, in the development of new services and products.

(2) Land management agencies should establish close liaison with other NAFIs, such as MCCS and AAFES/Exchange, to take advantage of the vast experience of those agencies. For example, when writing commercial contracts for provision of services and products, NAFIs routinely list within those contracts other agencies that may utilize the same vendor. This procedure is designed to make government more efficient, with all agencies able to use the same contract vehicles, without a separate years-long procurement process. Many commercial services on public land, from hospitality and cafes to telecommunications, have been sourced, vetted and contracted by other NAFIs. Public land management agencies should leverage that institutional knowledge, even as they seek specialized solutions for their unique market.

(3) Services and products offered on public land should adhere to the same market- segmentation practices that have proven to be effective in society as a whole; from basic amenities at low price to premium hospitality services/products at high price, offerings on public lands should attract those from a diverse socio-economic background. For example, the higher revenue from premium food and drink, or ultra-high speed Internet will assist agencies in funding more basic amenities at lower prices, or even offering them for free. A NAFI is best suited to ensuring the appropriateness and range of offerings by commercial vendors.

We continue to believe that public land management, and more diverse visitation, can best be enhanced through the provision of market-based, for-fee services. The American population increasingly expects both basic and premium hospitality amenities while on vacation, even on public land. It is critical that specialized, self-funded NAFIs oversee the quality provisioning of those services.

We thank you for allowing us to share our thoughts on how we can work in cooperation with the National Park Service and other organizations in the tourism and recreation communities to deliver great park experiences to a growing and changing America and to those who come to our nation to visit great places that tell America's stories.

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Statement of Forever Resorts
Before the Subcommittee on Interior, Committee on Oversight and Government Reform,
U.S. House of Representatives
On Modernizing the National Park Service Concessions Program
July 23, 2015

Forever Resorts currently operates as an authorized concessioner in 15 locations in 11 National Park Service (NPS) units. The company has been providing these services for over 34 years, during which time the ownership and management team of Forever Resorts has collectively accumulated hundreds of years of experience living and working in our National Parks. We are both proud and humbled to be an important part of these treasured locations and believe our role as a concessioner is to work in partnership with local park staff and management to ensure each visitor has an enriching and enjoyable park experience.

The hospitality industry has seen visitor expectations change and evolve over the years, often necessitating changes in the facilities and services required to deliver and respond to those expectations. Although it is important to preserve the unique, historic and pristine environment often found in our National Park units, the visitor commercial services provided at these park units must also evolve and adapt in order to be relevant to the visitors coming today.

This need to be responsive to today's visitors creates a challenge for many of the park units that struggle with dated facilities and infrastructure. In addition, a significant number of concession areas are located in remote environments, compounding the costs associated with upgrading services. Park managers struggle with limited financial resources to tackle both the maintenance backlog and these needed visitor enhancements, which would go a long way to not only meeting and exceeding visitor expectations, but increasing park visitation as well. Turning around declining park visitation would also generate needed funds through increased park entrance fees and franchise fees. Concessioners can be part of the solution to this need for funding.

Like many concessioners, Forever Resorts has demonstrated how working together with the NPS in some of our park locations has truly been a win, win, win, for the visitor, the NPS, and the concessioner. An example is a dated NPS-operated campground with no hookups providing services that have been virtually unchanged for over 50 years. In a number of cases, these campgrounds have been turned over to the concessioner and improvements have been made and services added, including electricity for each site. The visitors win, because their expectations are met for improved services. They are gladly willing to pay more for these improved services – often for a longer stay. The park benefits with increased fees. And the concessioner benefits from the higher revenues and occupancies of the campsites.

Forever Resorts would like to provide a few examples in some of the parks we operate where, working with the local park, we can focus on some initiatives in a few areas that would have a positive impact by creating "win, win, win" scenarios for the park visitors, the NPS, and the concessioner. These examples include: extending the operating season in parks where there is demonstrated demand; improving cell phone and Wi-Fi coverage in concession areas; taking over NPS campground operations and making needed improvements to same; and assisting in providing new and expanded services.

Expanding the Operating Season

A number of our park units experience strong seasonal demand and high occupancies, which can make it difficult to accommodate all the visitors who would like to come to the unit. Expanding the season when facilities can be adapted not only provides additional visitor opportunities to those who would otherwise be turned away, but positively impacts the gateway communities and other stakeholders, where economic activity drops dramatically when the "closed" sign goes up in the park.

This situation is especially true at the **Grand Canyon North Rim** and **Bryce Canyon**, where the park is open year around, but park concession operations are seasonal.

Improving Cell Phone and Wi-Fi Coverage in Concession Areas

Improving cell phone service and Wi-Fi coverage is an extremely important issue that has significant impacts on visitor satisfaction as well as present and future park visitation. Most travelers can no longer go on vacation without at least taking a little time to "stay connected" with business and other important obligations. In addition, the youth of today will shy away from – or not return for a future visit to – areas where access to social media and other electronic content is not possible.

At the **Grand Canyon North Rim,** the NPS needs to be more proactive, and allocate the necessary resources to improve guest Wi-Fi coverage. This site was one of the five locations identified by NPS Director Jarvis at the "Grand Thoughts" conference in October 2012. However, the only improvements that have been made are some minor tweaks that we were able to do. At **Bryce Canyon**, the concession operations receive many complaints on the lack of quality cell phone and Wi-Fi service. **Big Bend National Park** in remote west Texas was also identified as one of the five locations for a test park.

Assigning NPS Campground Operations to the Concessioner

As touched on above, this initiative could increase visitor satisfaction by offering improvements like individual site electricity and other site amenities desired by the guests. Even campers need to plug in and recharge their personal devices! This point has been proven by Forever at Signal Mountain Lodge in Grand Teton National Park and in Badlands National Park, as well as by numerous other concessioners in the system. Most parks do not have the resources to invest the capital needed to accomplish these improvements, and concessioners can often operate these campgrounds more efficiently while providing increased camping and franchise fees to the local park unit. Additional Forever Resorts concession operations that are candidates are **Grand Canyon North Rim, Bryce Canyon, Big Bend,** and **Mammoth Cave.**

Assisting in Providing New and Expanded Services

Many concessioners have numerous ideas for programs and initiatives to provide enhanced services and activities, as well as additional facilities where there is demonstrated demand. An example at a Forever Resorts concession operation is **Mammoth Cave**, which, years ago, was one of the top tourist destinations in the country. Unfortunately, because of budget constraints, and declining visitation over the years, a number of the popular tours have been significantly reduced or eliminated. The NPS is de-emphasizing the longer cave trips, and even closed the

concession-operated Snowball Dining Room on the cave floor. We believe that more creative trip alternatives can be offered. The NPS is now having a difficult time generating interest for the long-term concession contract offering that is not seeing competitive bid responses.

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Statement of Gettysburg Tours, Inc. and TRF Concession Specialists of Florida, Inc.
Before the Subcommittee on Interior, Committee on Oversight and Government Reform,
U.S. House of Representatives
On Modernizing the National Park Service Concessions Program
July 23, 2015

The companies stated above each operate a concession contract in a National Park. Gettysburg Tours, Inc. operates the Eisenhower Farm Shuttle Service in Gettysburg, Pennsylvania. This contact is under $500,000 in revenue and therefore has preferential right. TRF Concession Specialists of Florida, Inc. operates tram tours, bicycle rentals and a small souvenir shop in Shark Valley, Everglades National Park. This small business contract is under $3,000,000 in revenue. The two companies are owned and managed by the same individuals.

Overall, National Park Service (NPS) staff in the parks in which we operate is open to new ideas and visitor services. However, direction from upper-level NPS management is not always clear and interpretation of what is permitted when modifying authorized services during the term of the contract varies from park to park. The services that we have requested during the term of the contract do not change the contract revenue or bottom-line profit materially. In most cases, these services are relatively insignificant to the total contract and are suggested more for visitor convenience than for increase in profitability of the contract.

However, whether these added services are significant to the revenue of the contract or not, if local NPS staff thinks the park and visitors are better served by adding a service, the NPS needs to provide direction to authorize the service promptly during the term of the contract. NPS needs to learn to adapt quickly to changes in demand for services if they wish to stay relevant to today's consumer.

Prospectus development for contracts needs to be simplified. The process is so complex and the cost to prepare a bid proposal so significant ($75,000-$100,000 for a contract under $3,000,000 in revenue), that many business owners do not want to make the investment in the bid proposal costs, thus reducing the number of bidders on the smaller contracts. In addition, concessioners who perform above and beyond the terms of their contract should be given some points for their efforts in the evaluation process. This would provide some incentive during the contract term to perform at a level above "satisfactory" and continually make investments in the park in which they operate. The evaluation and award process needs to become more transparent, so that all participants understand the evaluation process and how awards are determined.

The National Park Hospitality Association (NPHA) has provided many detailed suggestions on improving visitor services and prospectus development. As NPHA members, we have contributed input and support the NPHA work in this area.

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United States Department of the Interior

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Washington, DC 20240

NOV - 2 2015

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

U.S. House Committee on Oversight and Government Reform
Subcommittee on Interior
July 23, 2015 Hearing: NPS Concessions

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."

U.S. House Committee on Oversight and Government Reform
Subcommittee on Interior
July 23, 2015 Hearing: NPS Concessions

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.

U.S. House Committee on Oversight and Government Reform
Subcommittee on Interior
July 23, 2015 Hearing: NPS Concessions

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

Subpart A—Authority and Purpose

Sec.
51.1 What does this part cover?
51.2 What is the policy underlying concessions contracts?

Subpart B—General Definitions

51.3 How are terms defined in this part?

Subpart C—Solicitation, Selection and Award Procedures

51.4 How will the Director invite the general public to apply for the award of a concession contract?
51.5 What information will the prospectus include?
51.6 Will a concession contract be developed for a particular potential offeror?
51.7 How will information be provided to a potential offeror after the prospectus is issued?
51.8 Where will the Director publish the notice of availability of the prospectus?
51.9 How do I get a copy of the prospectus?
51.10 How long will I have to submit my proposal?
51.11 May the Director amend, extend, or cancel a prospectus or solicitation?
51.12 Are there any other additional procedures that I must follow to apply for a concession contract?
51.13 When will the Director determine if proposals are responsive?
51.14 What happens if no responsive proposals are submitted?
51.15 May I clarify, amend or supplement my proposal after it is submitted?
51.16 How will the Director evaluate proposals and select the best one?
51.17 What are the selection factors?
51.18 When must the Director reject a proposal?
51.19 Must the Director award the concession contract that is set forth in the prospectus?
51.20 Does this part limit the authority of the Director?
51.21 When must the selected offeror execute the concession contract?
51.22 When may the Director award the concession contract?

Subpart D—Non-Competitive Award of Concession Contracts

51.23 May the Director extend an existing concession contract without a public solicitation?
51.24 May the Director award a temporary concession contract without a public solicitation?
51.25 Are there any other circumstances in which the Director may award a concession contract without public solicitation?

Subpart E—Right of Preference to a New Concession Contract

51.26 What solicitation, selection and award procedures apply when a preferred offeror exists?
51.27 Who is a preferred offeror and what are a preferred offeror's rights to the award of a new concession contract?
51.28 When will the Director determine whether a concessioner is a preferred offeror?
51.29 How will I know when a preferred offeror exists?
51.30 What must a preferred offeror do before it may exercise a right of preference?
51.31 What happens if a preferred offeror does not submit a responsive proposal?
51.32 What is the process if the Director determines that the best responsive proposal was not submitted by a preferred offeror?
51.33 What if a preferred offeror does not timely amend its proposal to meet the terms and conditions of the best proposal?
51.34 What will the Director do if a selected preferred offeror does not timely execute the new concession contract?
51.35 What happens to a right of preference if the Director receives no responsive proposals?

Subpart F—Determining a Preferred Offeror

51.36 What conditions must be met before the Director determines that a concessioner is a preferred offeror?
51.37 How will the Director determine that a new concession contract is a qualified concession contract?
51.38 How will the Director determine that a concession contract is an outfitter and guide concession contract?
51.39 What are some examples of outfitter and guide concession contracts?
51.40 What are some factors to be considered in determining that outfitter and guide operations are conducted in the backcountry?
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?
51.42 Are there exceptions to this compensable interest prohibition?
51.43 Who will make the determination that a concession contract is an outfitter and guide contract?
51.44 How will the Director determine if a concessioner was satisfactory for purposes of a right of preference?
51.45 Will a concessioner that has operated for less than the entire term of a concession contract be considered a satisfactory operator?
51.46 May the Director determine that a concessioner has not operated satisfactorily after a prospectus is issued?
51.47 How does a person appeal a decision of the Director that a concessioner is or is not a preferred offeror?
51.48 What happens to a right of preference in the event of termination of a concession contract for unsatisfactory performance or other breach?
51.49 May the Director grant a right of preference except in accordance with this part?
51.50 Does the existence of a preferred offeror limit the authority of the Director to establish the terms of a concession contract?

Subpart G—Leasehold Surrender Interest

51.51 What special terms must I know to understand leasehold surrender interest?
51.52 How do I obtain a leasehold surrender interest?
51.53 When may the Director authorize the construction of a capital improvement?
51.54 What must a concessioner do before beginning to construct a capital improvement?
51.55 What must a concessioner do after substantial completion of the capital improvement?
51.56 How will the construction cost for purposes of leasehold surrender interest value be determined?
51.57 How does a concessioner request arbitration of the construction cost of a capital improvement?
51.58 What actions may or must the concessioner take with respect to a leasehold surrender interest?
51.59 Will leasehold surrender interest be extinguished by expiration or termination of a leasehold surrender interest concession contract or may it be taken for public use?
51.60 How will a new concession contract awarded to an existing concessioner treat a leasehold surrender interest obtained under a prior concession contract?
51.61 How is an existing concessioner who is not awarded a new concession contract paid for a leasehold surrender interest?
51.62 What is the process to determine the leasehold surrender interest value when the concessioner does not seek or is not awarded a new concession contract?
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?

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?
51.65 May the concessioner gain additional leasehold surrender interest by replacing a fixture in which the concessioner has a leasehold surrender interest?
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?
51.67 Will a concessioner obtain leasehold surrender interest as a result of repair and maintenance of real property improvements?

Subpart H—Possessory Interest

51.68 If a concessioner under a 1965 Act concession contract is not awarded a new concession contract, how will a concessioner that has a possessory interest receive compensation for its possessory interest?
51.69 What happens if there is a dispute between a new concessioner and a prior concessioner as to the value of the prior concessioner's possessory interest?
51.70 If a concessioner under a 1965 Act concession contract is awarded a new concession contract, what happens to the concessioner's possessory interest?
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?
51.72 If a new concessioner is awarded the contract, what is the relationship between leasehold surrender interest and possessory interest?

Subpart I—Concession Contract Provisions

51.73 What is the term of a concession contract?
51.74 When may a concession contract be terminated by the Director?
51.75 May the Director segment or split concession contracts?
51.76 May the Director include in a concession contract or otherwise grant a concessioner a preferential right to provide new or additional visitor services?
51.77 Will a concession contract provide a concessioner an exclusive right to provide visitor services?
51.78 Will a concession contract require a franchise fee and will the franchise fee be subject to adjustment?
51.79 May the Director waive payment of a franchise fee or other payments?
51.80 How will the Director establish franchise fees for multiple outfitter and guide concession contracts in the same park area?
51.81 May the Director include "special account" provisions in concession contracts?
51.82 Are a concessioner's rates required to be reasonable and subject to approval by the Director?
51.83 Sale of Native handicrafts.

Subpart J—Assignment or Encumbrance of Concession Contracts

51.84 What special terms must I know to understand this part?
51.85 What assignments require the approval of the Director?
51.86 What encumbrances require the approval of the Director?
51.87 Does the concessioner have an unconditional right to receive the Director's approval of an assignment or encumbrance?
51.88 What happens if an assignment or encumbrance is completed without the approval of the Director?
51.89 What happens if there is a default on an encumbrance approved by the Director?
51.90 How does the concessioner get the Director's approval before making an assignment or encumbrance?
51.91 What information may the Director require in the application?
51.92 What are standard proformas?
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51.98 What records must the concessioner keep and what access does the Director have to records?
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Subpart L—The Effect of the 1998 Act's Repeal of the 1965 Act

51.101 Did the 1998 Act repeal the 1965 Act?
51.102 What is the effect of the 1998 Act's repeal of the 1965 Act's preference in renewal?
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Subpart M—Information Collection

51.104 Have information collection procedures been followed?

AUTHORITY: The Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 *et seq.*, particularly, 16 U.S.C. 3 and Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105-391).

SOURCE: 65 FR 20668, Apr. 17, 2000, unless otherwise noted.

Subpart A—Authority and Purpose

§51.1 What does this part cover?

This part covers the solicitation, award, and administration of concession contracts. The Director solicits, awards and administers concession contracts on behalf of the Secretary under the authority of the Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 *et seq.* and Title IV of the National Parks Omnibus Management Act of 1998 (Public Law 105-391). The purpose of concession contracts is to authorize persons (concessioners) to provide visitor services in park areas. All concession contracts are to be consistent with the requirements of this part. In accordance with section 403 of the 1998 Act, the Director will utilize concession contracts to authorize the provision of visitor services in park areas, except as may otherwise be authorized by law. For example, the Director may enter into commercial use authorizations under section 418 of the 1998 Act and may enter into agreements with non-profit organizations for the sale of interpretive materials and conduct of interpretive programs for a fee or charge in park areas. In addition, the Director may, as part of an interpretive program agreement otherwise authorized by law, authorize a non-profit organization to provide incidental visitor services that are necessary for the conduct of the interpretive program. Nothing in this part amends, supersedes, or otherwise affects any provision of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 *et seq.*) relating to revenue-producing visitor services.

§51.2 What is the policy underlying concessions contracts?

It is the policy of the Congress and the Secretary that visitor services in park areas may be provided only under carefully controlled safeguards against unregulated and indiscriminate use so that visitation will not unduly impair park values and resources. Development of visitor services in park areas will be limited to locations that are consistent to the highest practicable degree with the preservation and conservation of the resources and values of the park area. It is also the policy of the Congress and the Secretary of the Interior that development of visitor services in park areas must be limited to those as are necessary and appropriate for public use and enjoyment of the park area in which they are located.

Subpart B—General Definitions

§51.3 How are terms defined in this part?

To understand this part, you must refer to these definitions, applicable in the singular or the plural, whenever these terms are used in this part:

The *1965 Act* means Public Law 89-249, commonly known as the National Park Service Concession Policies Act of 1965.

A *1965 Act concession contract* is a concession contract or permit entered into under the authority of the 1965 Act.

The *1998 Act* means Title IV of Public Law 105-391.

The *award* of a concession contract is the establishment of a legally binding concession contract. It occurs only when the Director and a selected offeror both fully execute a concession contract.

A concession contract (or contract) means a binding written agreement between the Director and a concessioner entered under the authority of this part or the 1965 Act that authorizes the concessioner to provide certain visitor services within a park area under specified terms and conditions. Concession contracts are not contracts within the

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

or charge paid by the visitor may be direct or indirect as part of the provision of comprehensive visitor services (*e.g.*, when a lodging concessioner may provide free transportation services to guests). Visitor services may include, but are not limited to, lodging, campgrounds, food service, merchandising, tours, recreational activities, guiding, transportation, and equipment rental. Visitor services also include the sale of interpretive materials or the conduct of interpretive programs for a fee or charge to visitors.

Subpart C—Solicitation, Selection and Award Procedures

§51.4 How will the Director invite the general public to apply for the award of a concession contract?

(a) The Director must award all concession contracts, except as otherwise expressly provided in this part, through a public solicitation process. The public solicitation process begins with the issuance of a prospectus. The prospectus will invite the general public to submit proposals for the contract. The prospectus will describe the terms and conditions of the concession contract to be awarded and the procedures to be followed in the selection of the best proposal.

(b) Except as provided under §51.47 (which calls for a final administrative decision on preferred offeror appeals prior to the selection of the best proposal) the terms, conditions and determinations of the prospectus and the terms and conditions of the proposed concession contract as described in the prospectus, including, without limitation, its minimum franchise fee, are not final until the concession contract is awarded. The Director will not issue a prospectus for a concession contract earlier than eighteen months prior to the expiration of a related existing concession contract.

§51.5 What information will the prospectus include?

The prospectus must include the following information:

(a) The minimum requirements of the concession contract. The minimum requirements of the concession contract, include, but are not limited to the following:

(1) The minimum acceptable franchise fee or other forms of consideration to the Government;

(2) The minimum visitor services that the concessioner is to be authorized to provide;

(3) The minimum capital investment, if any, that the concessioner must make;

(4) The minimum measures that the concessioner must take to ensure the protection, conservation, and preservation of the resources of the park area; and

(5) Any other minimum requirements that the new contract may specify, including, as appropriate and without limitation, measurable performance standards;

(b) The terms and conditions of a current concession contract, if any, relating to the visitor services to be provided, including all fees and other forms of compensation provided to the Director under such contract;

(c) A description of facilities and services, if any, that the Director may provide to the concessioner under the terms of the concession contract, including, but not limited to, public access, utilities and buildings;

(d) An estimate of the amount of any compensation due a current concessioner from a new concessioner under the terms of an existing or prior concession contract;

(e) A statement identifying each principal selection factor for proposals, including subfactors, if any, and secondary factors, if any, and the weight and relative importance of the principal and any secondary factors in the selection decision;

(f) Such other information related to the proposed concession contract as is provided to the Director pursuant to a concession contract or is otherwise available to the Director, as the Director determines is necessary to allow for the submission of competitive proposals. Among other such necessary information a prospectus will contain (when applicable) are the gross receipts of the current concession contract broken out by department for the three most recent years; franchise fees charged under the current concession

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 prospectus, 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.

§51.13 When will the Director determine if proposals are responsive?

The Director will determine if proposals are responsive or non-responsive prior to or as of the date of selection of the best proposal.

§51.14 What happens if no responsive proposals are submitted?

If no responsive proposals are submitted, the Director may cancel the solicitation, or, after cancellation, establish new contract requirements and issue a new prospectus.

§51.15 May I clarify, amend or supplement my proposal after it is submitted?

(a) The Director may request from any offeror who has submitted a timely proposal a written clarification of its proposal. Clarification refers to making clear any ambiguities that may have been contained in a proposal but does not include amendment or supplementation of a proposal. An offeror may not amend or supplement a proposal after the submission date unless requested by the Director to do so and the Director provides all offerors that submitted proposals a similar opportunity to amend or supplement their proposals. Permitted amendments must be limited to modifying particular aspects of proposals resulting from a general failure of offerors to understand particular requirements of a prospectus or a general failure of offerors to submit particular information required by a prospectus.

(b) A proposal may suggest changes to the terms and conditions of a proposed concession contract and still be considered as responsive so long as the suggested changes are not conditions to acceptance of the terms and conditions of the proposed concession contract. The fact that a proposal may suggest changes to the proposed concession contract does not mean that the Director may accept those changes without a resolicitation of the concession opportunity.

§51.16 How will the Director evaluate proposals and select the best one?

(a) The Director will apply the selection factors set forth in §51.17 by assessing each timely proposal under each of the selection factors on the basis of a narrative explanation, discussing any subfactors when applicable. For each selection factor, the Director will assign a score that reflects the determined merits of the proposal under the applicable selection factor and in comparison to the other proposals received, if any. The first four principal selection factors will be scored from zero to five. The fifth selection factor will be scored from zero to four (with a score of one for agreeing to the minimum franchise fee contained in the prospectus). The secondary factor set forth in §51.17(b)(1) will be scored from zero to three. Any additional secondary selection factors set forth in the prospectus will be scored as specified in the prospectus provided that the aggregate possible point score for all additional secondary selection factors may not exceed a total of three.

(b) The Director will then assign a cumulative point score to each proposal based on the assigned score for each selection factor.

(c) The responsive proposal with the highest cumulative point score will be selected by the Director as the best proposal. If two or more responsive proposals receive the same highest point score, the Director will select as the best proposal (from among the responsive proposals with the same highest point score), the responsive proposal that the Director determines on the basis of a narrative explanation will, on an overall basis, best achieve the purposes of this part. Consideration of revenue to the United States in this determination and in scoring proposals under principal selection factor five will be subordinate to the objectives of protecting, conserving, and preserving the resources of the park area and of providing necessary and appropriate visitor services to the public at reasonable rates.

§51.17 What are the selection factors?

(a) The five principal selection factors are:

(1) The responsiveness of the proposal to the objectives, as described in the prospectus, of protecting, conserving, and preserving resources of the park area;

(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 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

than 10 years in duration, or, pursuant to §51.24(b), the Director must submit the concession contract to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The Director must not award any such concession contract until 60 days after the submission. Award of these contracts may not be made without the Director's written approval. The Director may not delegate this approval except to a Deputy Director or an Associate Director. The Director may award a concession contract that is not subject to these or other special award requirements at any time after selection of the best proposal and execution of the concession contract by the offeror.

Subpart D—Non-Competitive Award of Concession Contracts

§51.23 May the Director extend an existing concession contract without a public solicitation?

Notwithstanding the public solicitation requirements of this part, the Director may award non-competitively an extension or extensions of an existing concession contract to the current concessioner for additional terms not to exceed three years in the aggregate, *e.g.*, the Director may award one extension with a three year term, two consecutive extensions, one with a two year term and one with a one year term, or three consecutive extensions with a term of one year each. The Director may award such extensions only if the Director determines that the extension is necessary to avoid interruption of visitor services. Before determining to award such a contract extension, the Director must take all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services. Further, the Director must publish notice in the FEDERAL REGISTER of the proposed extension at least 30 days in advance of the award of the extension (except in emergency situations).

§51.24 May the Director award a temporary concession contract without a public solicitation?

(a) Notwithstanding the public solicitation requirements of this part, the Director may award non-competitively a temporary concession contract or contracts for consecutive terms not to exceed three years in the aggregate, *e.g.*, the Director may award one temporary contract with a three year term, two consecutive temporary contracts, one with a two year term and one with a one year term, or three consecutive temporary contracts with a term of one year each, to any qualified person for the conduct of particular visitor services in a park area if the Director determines that the award is necessary to avoid interruption of visitor services. Before determining to award a temporary concession contract, the Director must take all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services. Further, the Director must publish notice in the FEDERAL REGISTER of the proposed temporary concession contract at least 30 days in advance of its award (except in emergency situations). A temporary concession contract may not be extended. A temporary concession contract may not be awarded to continue visitor services provided under an extended concession contract except as permitted by paragraph (b) of this section.

(b) Notwithstanding the last sentence of paragraph (a) of this section, the Director may award a temporary concession contract for consecutive terms not to exceed three years in the aggregate to authorize the continuing conduct of visitor services that were conducted under a concession contract that was in effect as of November 13, 1998, and that either had been extended as of that date or was due to expire by December 31, 1998, and was subsequently extended. The Director must personally approve the award of a temporary concession contract in these circumstances and may do so only if the Director determines that the award is necessary to avoid interruption of visitor services and that all reasonable alternatives to the award of the temporary concession contract have been

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 REGISTER 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.

§51.29 How will I know when a preferred offeror exists?

If the Director has determined that a preferred offeror exists for a qualified concession contract under this part, the Director will identify the preferred offeror in the applicable prospectus and describe the preferred offeror's right of preference.

§51.30 What must a preferred offeror do before it may exercise a right of preference?

A preferred offeror must submit a responsive proposal pursuant to the terms of an applicable prospectus for a qualified concession contract if the preferred offeror wishes to exercise a right of preference.

§51.31 What happens if a preferred offeror does not submit a responsive proposal?

If a preferred offeror fails to submit a responsive proposal, the offeror may not exercise a right of preference. The concession contract will be awarded to the offeror submitting the best responsive proposal.

§51.32 What is the process if the Director determines that the best responsive proposal was not submitted by a preferred offeror?

If the Director determines that a proposal other than the responsive proposal submitted by a preferred offeror is the best proposal submitted for a qualified concession contract, then the Director must advise the preferred offeror of the better terms and conditions of the best proposal and permit the preferred offeror to amend its proposal to match them. An amended proposal must match the better terms and conditions of the best proposal as determined by the Director. If the preferred offeror duly amends its proposal within the time period allowed by the Director, and the Director determines that the amended proposal matches the better terms and conditions of the best proposal, then the Director must select the preferred offeror for award of the contract upon the amended terms and conditions, subject to other applicable requirements of this part.

§51.33 What if a preferred offeror does not timely amend its proposal to meet the terms and conditions of the best proposal?

If a preferred offeror does not amend its proposal to meet the terms and conditions of the best proposal within the time period allowed by the Director, the Director will select for award of the contract the offeror that submitted the best responsive proposal.

§51.34 What will the Director do if a selected preferred offeror does not timely execute the new concession contract?

If a selected preferred offeror fails to execute the concession contract in the time period specified by the Director, the Director either will select for award of the concession contract the offeror that submitted the best responsive proposal, or will cancel the solicitation and may resolicit the concession contract but only without recognition of a preferred offeror or right of preference.

§51.35 What happens to a right of preference if the Director receives no responsive proposals?

If the Director receives no responsive proposals, including a responsive proposal from a preferred offeror, in response to a prospectus for a qualified concession contract for which a preferred offeror exists, the Director must cancel the solicitation and may resolicit the concession contract or take other appropriate action in accordance with this part. No right of preference will apply to a concession contract resolicited under this section unless the contract is resolicited upon terms and conditions materially more favorable to offerors than those contained in the original contract.

Subpart F—Determining a Preferred Offeror

§51.36 What conditions must be met before the Director determines that a concessioner is a preferred offeror?

A concessioner is a preferred offeror if the Director determines that the following conditions are met:

(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 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.

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§ 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.

§51.42 Are there exceptions to this compensable interest prohibition?

Two exceptions to this compensable interest prohibition exist:

(a) The prohibition will not apply to real property improvements lawfully constructed by a concessioner with the written approval of the Director in accordance with the express terms of a 1965 Act concession contract; and

(b) The prohibition will not apply to real property improvements constructed and owned in fee simple by a concessioner or owned in fee simple by a concessioner's predecessor before the land on which they were constructed was included within the boundaries of the applicable park area.

§51.43 Who will make the determination that a concession contract is an outfitter and guide contract?

Only a Deputy Director or an Associate Director will make the determination that a concession contract is or is not an outfitter and guide contract.

§51.44 How will the Director determine if a concessioner was satisfactory for purposes of a right of preference?

To be a satisfactory concessioner for the purposes of a right of preference, the Director must determine that the concessioner operated satisfactorily on an overall basis during the term of its applicable concession contract, including extensions of the contract. The Director will base this determination in consideration of annual evaluations made by the Director of the concessioner's performance under the terms of the applicable concession contract and other relevant facts and circumstances. The Director must determine that a concessioner did not operate satisfactorily on an overall basis during the term of a concession contract if the annual evaluations of the concessioner made subsequent to May 17, 2000 are less than satisfactory for any two or more years of operation under the concession contract.

§51.45 Will a concessioner that has operated for less than the entire term of a concession contract be considered a satisfactory operator?

The Director will determine that a concessioner has operated satisfactorily on an overall basis during the term of a concession contract only if the concessioner (including a new concessioner resulting from an assignment as described in this part, including, without limit, an assignment of a controlling interest in a concessioner as defined in this part) has or will have operated for more than two years under a concession contract with a term of more than five years or for one year under a concession contract with a term of five years or less. For purposes of this section, a new concessioner's first day of operation under an assigned concession contract (or as a new concessioner after approval of an assignment of a controlling interest in a concessioner) will be the day the Director approves the assignment pursuant to this part. If the Director determines that an assignment was compelled by circumstances beyond the control of the assigning concessioner, the Director may make an exception to the requirements of this section.

§51.46 May the Director determine that a concessioner has not operated satisfactorily after a prospectus is issued?

The Director may determine that a concessioner has not operated satisfactorily on an overall basis during the term of a current concession contract, and therefore is not a preferred offeror, after a prospectus for a new contract has been issued and prior to the selection of the best proposal submitted in response to a prospectus. In circumstances where the usual time of an annual evaluation of a concessioner's performance may not occur until after the selection of the best proposal submitted in response to a prospectus, the Director will make an annual performance evaluation based on a shortened operations period prior to the selection of the best proposal. Such shorter operations period, however, must encompass at least 6 months of operations from the previous annual performance

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 appeal 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

preference or any other form of entitlement of any nature to a new concession contract, except in accordance with this part or in accordance with 36 CFR part 13.

§51.50 Does the existence of a preferred offeror limit the authority of the Director to establish the terms of a concession contract?

The existence of a preferred offeror does not limit the authority of the Director to establish, in accordance with this part, the terms and conditions of a new concession contract, including, but not limited to, terms and conditions that modify the terms and conditions of a prior concession contract.

Subpart G—Leasehold Surrender Interest

§51.51 What special terms must I know to understand leasehold surrender interest?

To understand leasehold surrender interest, you must refer to these definitions, applicable in the singular or the plural, whenever these terms are used in this part:

Arbitration means binding arbitration conducted by an arbitration panel. All arbitration proceedings conducted under the authority of this subpart or subpart H of this part will utilize the following procedures unless otherwise agreed by the concessioner and the Director. One member of the arbitration panel will be selected by the concessioner, one member will be selected by the Director, and the third (neutral) member will be selected by the two party-appointed members. The neutral arbiter must be a licensed real estate appraiser. The expenses of the neutral arbiter and other associated common costs of the arbitration will be borne equally by the concessioner and the Director. The arbitration panel will adopt procedures that treat each party equally, give each party the opportunity to be heard, and give each party a fair opportunity to present its case. Adjudicative procedures are not encouraged but may be adopted by the panel if determined necessary in the circumstances of the dispute. Determinations must be made by a majority of the members of the panel and will be binding on the concessioner and the Director.

A capital improvement is a structure, fixture, or non-removable equipment provided by a concessioner pursuant to the terms of a concession contract and located on lands of the United States within a park area. A capital improvement does not include any interest in land. Additionally, a capital improvement does not include any interest in personal property of any kind including, but not limited to, vehicles, boats, barges, trailers, or other objects, regardless of size, unless an item of personal property becomes a fixture as defined in this part. Concession contracts may further describe, consistent with the limitations of this part and the 1998 Act, the nature and type of specific capital improvements in which a concessioner may obtain a leasehold surrender interest.

Construction cost of a capital improvement means the total of the incurred eligible direct and indirect costs necessary for constructing or installing the capital improvement that are capitalized by the concessioner in accordance with Generally Accepted Accounting Principals (GAAP). The term "construct" or "construction" as used in this part also means "install" or "installation" of fixtures where applicable.

Consumer Price Index means the national "Consumer Price Index—All Urban Consumers" published by the Department of Labor. If this index ceases to be published, the Director will designate another regularly published cost-of-living index approximating the national Consumer Price Index.

Depreciation means the loss of value in a capital improvement as evidenced by the condition and prospective serviceability of the capital improvement in comparison with a new unit of like kind.

Eligible direct costs means the sum of all incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project), that are necessary both for the construction of a capital improvement and are typically elements of a construction contract. Eligible direct 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): 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., wallboard, flooring, concrete, cinder blocks, steel beams, studs, window frames, windows, rafters, roofing, framing, siding, lumber, insulation, wallpaper, paint, etc.). Because of their special 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;

(3) Less depreciation of the related capital improvement on the basis of its condition as of the date of termination or expiration of the applicable leasehold surrender interest concession contract, or, if applicable, the date on which a concessioner ceases to utilize a related capital improvement (*e.g.*, where the related capital improvement is taken out of service by the Director pursuant to the terms of a concession contract).

Major rehabilitation means a planned, comprehensive rehabilitation of an existing structure that:

(1) The Director approves in advance and determines is completed within 18 months from start of the rehabilitation work (unless a longer period of time is approved by the Director in special circumstances); and

(2) The construction cost of which exceeds fifty percent of the pre-rehabilitation value of the structure.

Pre-rehabilitation value of an existing structure means the replacement cost of the structure less depreciation.

Real property improvements means real property other than land, including, but not limited to, capital improvements.

Related capital improvement or *related fixture* means a capital improvement in which a concessioner has a leasehold surrender interest.

Replacement cost means the estimated cost to reconstruct, at current prices, an existing structure with utility equivalent to the existing structure, using modern materials and current standards, design and layout.

Structure means a building, dock, or similar edifice affixed to the land so as to be part of the real estate. A structure may include both constructed infrastructure (*e.g.*, water, power and sewer lines) and constructed site improvements (*e.g.*, paved roads, retaining walls, sidewalks, paved driveways, paved parking areas) that are permanently affixed to the land so as to be part of the real estate and that are in direct support of the use of a building, dock, or similar edifice. Landscaping that is integral to the construction of a structure is considered as part of a structure. Interior furnishings that are not fixtures are not part of a structure.

Substantial completion of a capital improvement means the condition of a capital improvement construction project when the project is substantially complete and ready for use and/or occupancy.

§51.52 How do I obtain a leasehold surrender interest?

Leasehold surrender interest concession contracts will contain appropriate leasehold surrender interest terms and conditions consistent with this part. A concessioner will obtain leasehold surrender interest in capital improvements constructed in accordance with this part and the leasehold surrender interest terms and conditions of an applicable leasehold surrender interest concession contract.

§51.53 When may the Director authorize the construction of a capital improvement?

The Director may only authorize or require a concessioner to construct capital improvements on park lands in accordance with this part and under the terms and conditions of a leasehold surrender interest concession contract for the conduct by the concessioner of visitor services, including, without limitation, the construction of capital improvements necessary for the conduct of visitor services.

§51.54 What must a concessioner do before beginning to construct a capital improvement?

Before beginning to construct any capital improvement, the concessioner must obtain written approval from the Director in accordance with the terms of its leasehold surrender interest concession contract. The request for approval must include appropriate plans and specifications for the capital improvement and any other information that the Director may specify. The request must also include an estimate of the total construction cost of the capital improvement. The estimate of the total construction cost must specify all elements of the cost in such detail as is necessary to permit the Director to determine that they are elements of construction cost as defined in this part. (The approval requirements of this and other sections of this part also apply to

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 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

within the meaning of this part and for all other purposes.

§51.60 How will a new concession contract awarded to an existing concessioner treat a leasehold surrender interest obtained under a prior concession contract?

When a concessioner under a leasehold surrender interest concession contract is awarded a new concession contract by the Director, and the new concession contract continues a leasehold surrender interest in related capital improvements, then the concessioner's leasehold surrender interest value (established as of the date of expiration or termination of its prior concession contract) in the related capital improvements will be continued as the initial value (instead of initial construction cost) of the concessioner's leasehold surrender interest under the terms of the new concession contract. No compensation will be due the concessioner for its leasehold surrender interest or otherwise in these circumstances except as provided by this part.

§51.61 How is an existing concessioner who is not awarded a new concession contract paid for a leasehold surrender interest?

(a) When a concessioner is not awarded a new concession contract after expiration or termination of a leasehold surrender interest concession contract, or, the concessioner, prior to such termination or expiration, ceases to utilize under the terms of a concession contract capital improvements in which the concessioner has a leasehold surrender interest, the concessioner will be entitled to be paid its leasehold surrender interest value in the related capital improvements. The leasehold surrender interest will not be transferred until payment of the leasehold surrender interest value. The date for payment of the leasehold surrender interest value, except in special circumstances beyond the Director's control, will be the date of expiration or termination of the leasehold surrender interest contract, or the date the concessioner ceases to utilize related capital improvements under the terms of a concession contract. Depreciation of the related capital improvements will be established as of the date of expiration or termination of the concession contract, or, if applicable, the date the concessioner ceases to utilize the capital improvements under the terms of a concession contract.

(b) In the event that extraordinary circumstances beyond the control of the Director prevent the Director from making the leasehold surrender interest value payment as of the date of expiration or termination of the leasehold surrender interest concession contract, or, as of the date a concessioner ceases to utilize related capital improvements under the terms of a concession contract, the payment when made will include interest on the amount that was due on the date of expiration or termination of the concession contract or cessation of use for the period after the payment was due until payment is made (in addition to the inclusion of a continuing Consumer Price Index adjustment until the date payment is made). The rate of interest will be the applicable rate of interest established by law for overdue obligations of the United States. The payment for a leasehold surrender interest value will be made within one year after the expiration or termination of the concession contract or the cessation of use of related capital improvements under the terms of a concession contract.

§51.62 What is the process to determine the leasehold surrender interest value when the concessioner does not seek or is not awarded a new concession contract?

Leasehold surrender interest concession contracts must contain provisions under which the Director and the concessioner will seek to agree in advance of the expiration or other termination of the concession contract as to what the concessioner's leasehold surrender interest value will be on a unit-by-unit basis as of the date of expiration or termination of the concession contract. In the event that agreement cannot be reached, the provisions of the leasehold surrender interest concession contract must provide for the Director to make a final determination of leasehold surrender interest value unless binding arbitration as to the value is requested by the concessioner. The arbitration procedures are described in §51.51. A

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 structures 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.

§51.67 Will a concessioner obtain leasehold surrender interest as a result of repair and maintenance of real property improvements?

A concessioner will not obtain initial or increased leasehold surrender interest as a result of repair and maintenance of real property improvements unless a repair and maintenance project is a major rehabilitation.

Subpart H—Possessory Interest

§51.68 If a concessioner under a 1965 Act concession contract is not awarded a new concession contract, how will a concessioner that has a possessory interest receive compensation for its possessory interest?

A concessioner that has possessory interest in real property improvements pursuant to the terms of a 1965 Act concession contract, will, if the prior concessioner does not seek or is not awarded a new concession contract upon expiration or other termination of its 1965 Act concession contract, be entitled to receive compensation for its possessory interest in the amount and manner described by the possessory interest concession contract. The concessioner shall also be entitled to receive all other compensation, including any compensation for property in which there is no possessory interest, to the extent and in the manner that the possessory interest contract may provide.

§51.69 What happens if there is a dispute between the new concessioner and a prior concessioner as to the value of the prior concessioner's possessory interest?

In case of a dispute between a new concessioner and a prior concessioner as to the value of the prior concessioner's possessory interest, the dispute will be resolved under the procedures contained in the possessory interest concession contract. A new concessioner will not agree on the value of a prior concessioner's possessory interest without the prior written approval of the Director unless the value is determined through the binding determination process required by the possessory interest concession contract. The Director's written approval is to ensure that the value is consistent with the terms and conditions of the possessory interest concession contract. If a new concessioner and a prior concessioner engage in a binding process to resolve a dispute as to the value of the prior concessioner's possessory interest, the new concessioner must allow the Director to assist the new concessioner in the dispute process to the extent requested by the Director. Nothing in this section may be construed as limiting the rights of the prior concessioner to be paid for its possessory interest or other property by a new concessioner in accordance with the terms of its concession contract.

§51.70 If a concessioner under a 1965 Act concession contract is awarded a new concession contract, what happens to the concessioner's possessory interest?

In the event a concessioner under a 1965 Act concession contract is awarded a new concession contract replacing a possessory interest concession contract, the concessioner will obtain a leasehold surrender interest in its existing possessory interest real property improvements under the terms of the new concession contract. The concessioner will carry over as the initial value of such leasehold surrender interest (instead of initial construction cost) an amount equal to the value of its possessory interest in real property improvements as of the expiration or other termination of its possessory interest contract. This leasehold surrender interest will apply to the concessioner's possessory interest in real property improvements even if the real property improvements are not capital improvements as defined in this part. In the event that the concessioner had a possessory interest in only a portion of a structure, depreciation for purposes of leasehold surrender interest value under the new concession contract will apply only to the portion of the structure to which the possessory interest applied. The concessioner and the Director will seek to agree on an allocation of the leasehold surrender interest value on a unit by unit basis.

§ 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 1965 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.

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.

§51.76 May the Director include in a concession contract or otherwise grant a concessioner a preferential right to provide new or additional visitor services?

The Director may not include a provision in a concession contract or otherwise grant a concessioner a preferential right to provide new or additional visitor services under the terms of a concession contract or otherwise. For the purpose of this section, a "preferential right to new or additional services" means a right of a concessioner to a preference (in the nature of a right of first refusal or otherwise) to provide new or additional visitor services in a park area beyond those already provided by the concessioner under the terms of a concession contract. A concession contract may be amended to authorize the concessioner to provide minor additional visitor services that are a reasonable extension of the existing services. A concessioner that is allocated park area entrance, user days or similar resource use allocations for the purposes of a concession contract will not obtain any contractual or other rights to continuation of a particular allocation level pursuant to the terms of a concession contract or otherwise. Such allocations will be made, withdrawn and/or adjusted by the Director from time to time in furtherance of the purposes of this part.

§51.77 Will a concession contract provide a concessioner an exclusive right to provide visitor services?

Concession contracts will not provide in any manner an exclusive right to provide all or certain types of visitor services in a park area. The Director may limit the number of concession contracts to be awarded for the conduct of visitor services in a particular park area in furtherance of the purposes described in this part.

§51.78 Will a concession contract require a franchise fee and will the franchise fee be subject to adjustment?

(a) Concession contracts will provide for payment to the government of a franchise fee or other monetary consideration as determined by the Director upon consideration of the probable value to the concessioner of the privileges granted by the contract involved. This probable value will be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate visitor services at reasonable rates.

(b) The franchise fee contained in a concession contract with a term of 5 years or less may not be adjusted during the term of the contract. Concession contracts with a term of more than 5 years will contain a provision that provides for adjustment of the contract's established franchise fee at the request of the concessioner or the Director. An adjustment will occur if the concessioner and the Director mutually determine that extraordinary, unanticipated changes occurred after the effective date of the contract that have affected or will significantly affect the probable value of the privileges granted by the contract. The concession contract will provide for arbitration if the Director and a concessioner cannot agree upon an appropriate adjustment to the franchise fee that reflects the extraordinary, unanticipated changes determined by the concessioner and the Director.

§51.79 May the Director waive payment of a franchise fee or other payments?

The Director may not waive the concessioner's payment of a franchise fee or other payments or consideration required by a concession contract, except that a franchise fee may be waived in part by the Director pursuant to administrative guidelines that may allow for a partial franchise fee waiver in recognition of exceptional performance by a concessioner under the terms of a concession contract. A concessioner will have no right to require the partial waiver of a franchise fee under this authority or under any related administrative guidelines.

§ 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 expended 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

characteristics of the related park area. To further this objective, concession contracts will contain a provision that exempts the revenue of a concessioner derived from the sale of appropriately labeled or denoted authentic native handicrafts from the concession contract's franchise fee.

(b) The sale of products as authentic native handicrafts is further regulated under the Indian Arts and Crafts Act, Public Law 101-644, as amended.

(c) *Definitions.* (1) *Alaska Native* means any citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metalakatla Indian Community), Eskimo, or Aleut blood, or combination thereof. The term includes any person so defined either or both of whose adoptive parents are not Alaska Natives. It also includes, in the absence of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Alaska native village or native groups of which he or she claims to be a member and whose father or mother is (or, if deceased, was) regarded as an Alaska Native by any village or group.

(2) *Arts and crafts objects* means art works and crafts that are in a traditional or non-traditional style or medium.

(3) *Authentic native handicrafts* means arts and crafts objects created by a United States Indian, Alaska Native, Native Samoan or Native Hawaiian that are made with the help of only such devices as allow the manual skill of the maker to condition the shape and design of each individual object.

(4) *Native Hawaiian* means any individual who is a descendant of the aboriginal people that, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(5) *United States Indian* means any individual that is a member of an Indian tribe as defined in 18 U.S.C. 1159(c)(3).

[72 FR 32190, June 12, 2007]

Subpart J—Assignment or Encumbrance of Concession Contracts

§51.84 What special terms must I know to understand this part?

To understand this subpart specifically and this part in general you must refer to these definitions, applicable in the singular or plural, whenever the terms are used in this part.

A *controlling interest in a concession contract* means an interest, beneficial or otherwise, that permits the exercise of managerial authority over a concessioner's performance under the terms of the concession contract and/or decisions regarding the rights and liabilities of the concessioner.

A *controlling interest in a concessioner* means, in the case of corporate concessioners, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the concessioner or related entities that permits the exercise of managerial authority over the actions and operations of the concessioner. A "controlling interest" in a concessioner also means, in the case of corporate concessioners, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the concessioner or related entities to permit the election of a majority of the Board of Directors of the concessioner. The term "controlling interest" in a concessioner, in the instance of a partnership, limited partnership, joint venture, other business organization or individual entrepreneurship, means ownership or beneficial ownership of the assets of the concessioner that permits the exercise of managerial authority over the actions and operations of the concessioner.

Rights to operate and/or manage under a concession contract means any arrangement where the concessioner employs or contracts with a third party to operate and/or manage the performance of a concession contract (or any portion thereof). This does not apply to arrangements with an individual employee.

Subconcessioner means a third party that, with the approval of the Director, has been granted by a concessioner rights to operate under a concession

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 encumbrance 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.

§51.88 What happens if an assignment or encumbrance is completed without the approval of the Director?

Assignments or encumbrances completed without the prior written approval of the Director will be considered as null and void and a material breach of the applicable concession contract which may result in termination of the contract for cause. No person will obtain any valid or enforceable rights in a concessioner, in a concession contract, or to operate or manage under a concession contract as a subconcessioner or otherwise, or to leasehold surrender interest or possessory interest, if acquired in violation of the requirements in this subpart.

§51.89 What happens if there is a default on an encumbrance approved by the Director?

In the event of default on an encumbrance approved by the Director in accordance with this part, the creditor, or an assignee of the creditor, may succeed to the interests of the concessioner only to the extent provided by the approved encumbrance, this part and the terms and conditions of the applicable concession contract.

§51.90 How does the concessioner get the Director's approval before making an assignment or encumbrance?

Before completing any assignment or encumbrance which may be considered to be the type of transaction described in this part, including, but not limited to, the assignment or encumbrance of what may be a controlling interest in a concessioner or a concession contract, the concessioner must apply in writing for approval of the transaction by the Director.

§51.91 What information may the Director require in the application?

An application for the Director's approval of an assignment or encumbrance will include, to the extent required by the Director in the circumstances of the transaction, the following information in such detail as the Director may specify in order to make the determinations required by this subpart:

(a) All instruments proposed to implement the transaction;

(b) An opinion of counsel to the effect that the proposed transaction is lawful under all applicable federal and state laws;

(c) A narrative description of the proposed transaction;

(d) A statement as to the existence and nature of any litigation relating to the proposed transaction;

(e) A description of the management qualifications, financial background, and financing and operational plans of any proposed transferee;

(f) A detailed description of all financial aspects of the proposed transaction;

(g) Prospective financial statements (proformas);

(h) A schedule that allocates in detail the purchase price (or, in the case of a transaction other than an asset purchase, the valuation) of all assets assigned or encumbered. In addition, the applicant must provide a description of the basis for all allocations and ownership of all assets; and

(i) Such other information as the Director may require to make the determinations required by this subpart.

§51.92 What are standard proformas?

Concessioners are encouraged to submit standard prospective financial statements (proformas) pursuant to this part. A "standard proforma" is one that:

(a) Provides projections, including revenues and expenses that are consistent with the concessioner's past operating history unless the proforma is accompanied by a narrative that describes why differing expectations are achievable and realistic;

(b) Assumes that any loan related to an assignment or encumbrance will be paid in full by the expiration of the concession contract unless the proforma contains a narrative description as to why an extended loan period is consistent with an opportunity for reasonable profit over the remaining term of the concession contract. The narrative description must include, but is not limited to, identification of the loan's collateral after expiration of the concession contract; and

(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 that 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.

§ 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

and affiliates, only to the extent necessary to confirm the validity and performance of any representations or commitments made to the Director by a parent or affiliate of the concessioner).

§51.99 What access to concessioner records will the Comptroller General have?

The Comptroller General or any duly authorized representative of the Comptroller General must, until the expiration of five calendar years after the close of the business year of each concessioner (or subconcessioner), have access to and the right to examine all pertinent books, papers, documents and records of the concessioner, subconcessioner and any parent or affiliate of the concessioner (but with respect to parents and affiliates only to the extent necessary to confirm the validity and performance of any representations or commitments made to the Director by the parent or affiliate of the concessioner).

§51.100 When will the Director make proposals and evaluation documents publicly available?

In the interest of enhancing competition for concession contracts, the Director will not make publicly available proposals submitted in response to a prospectus or documents generated by the Director in evaluating such proposals, until the date that the new concession contract solicited by the prospectus is awarded. At that time, the Director may or will make the proposals and documents publicly available in accordance with applicable law.

Subpart L—The Effect of the 1998 Act's Repeal of the 1965 Act

§51.101 Did the 1998 Act repeal the 1965 Act?

Section 415 of the 1998 Act repealed the 1965 Act and related laws as of November 13, 1998. This repeal did not affect the validity of any 1965 Act concession contract. The provisions of this part apply to all 1965 Act concession contracts except to the extent that such provisions are inconsistent with terms and conditions of a 1965 Act concession contract.

§51.102 What is the effect of the 1998 Act's repeal of the 1965 Act's preference in renewal?

(a) Section 5 of the 1965 Act required the Secretary to give existing satisfactory concessioners a preference in the renewal (termed a "renewal preference" in the rest of this section) of its concession contract or permit. Section 415 of the 1998 Act repealed this statutory renewal preference as of November 13, 1998. It is the final decision of the Director, subject to the right of appeal set forth in paragraph (b) of this section, that holders of 1965 Act concession contracts are not entitled to be given a renewal preference with respect to such contracts (although they may otherwise qualify for a right of preference regarding such contracts under Sections 403(7) and (8) of the 1998 Act as implemented in this part). However, if a concessioner holds an existing 1965 Act concession contract and the contract makes express reference to a renewal preference, the concessioner may appeal to the Director for recognition of a renewal preference.

(b) Such appeal must be in writing and be received by the Director no later than thirty days after the issuance of a prospectus for a concession contract under this part for which the concessioner asserts a renewal preference. The Director must make a decision on the appeal prior to the proposal submission date specified in the prospectus. Where applicable, the Director will give notice of this appeal to all potential offerors that requested a prospectus. The Director may delegate consideration of such appeals only to a Deputy or Associate Director. The deciding official must prepare a written decision on the appeal, taking into account the content of the appeal and other available information.

(c) If the appeal results in a determination by the Director that the 1965 Act concession contract in question makes express reference to a renewal preference under section 5 of the 1965 Act, the 1998 Act's repeal of section 5 of the 1965 Act was inconsistent with the terms and conditions of the concession contract, and that the holder of the concession contract in these circumstances is entitled to a renewal

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 recordkeeping requirements were identified in subpart F regarding appeal of a preferred offeror determination, subpart G regarding leasehold surrender interest and in subpart K regarding recordkeeping 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. 4601-4 *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 fedbizopps.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 fedbizopps.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 fedbizopps.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

prospectuses and also coordinate on the content of press releases. In addition, Park staff must notify appropriate congressional delegates about a prospectus and should include potentially controversial information such as rights of preference. Park staff should pursue other means of notifying interested parties, such as attending local Chamber of Commerce meetings.

The Regional Office should charge a reasonable fee for a hard copy of the prospectus to recover the costs of printing, binding, and mailing the document. The Regional Office should not send a copy of the prospectus until after receiving payment.

Recipient Log

The Regional Office maintains a recipient log to record contact information (name, address, phone number, e-mail) for all persons or businesses requesting a copy or copies of a prospectus, the number of copies requested, the date of receiving the request, the date of mailing the prospectus, the mailing address for the prospectus, and the express delivery tracking number, if applicable. The log also should include contact information for those who download copies of the prospectus online as such information becomes available. The recipient log will become part of the administrative record.

4.1.2 Site Visit

The site visit provides an opportunity for interested parties to tour the Concession Facilities and obtain a better understanding of the business opportunity. The site visit allows potential offerors an opportunity to conduct due diligence, become familiar with the local environment of the park and surrounding area, and evaluate the condition of Concession Facilities. The site visit also markets the prospectus and allows the Service to gauge interest in the business opportunity. A site visit should occur for all Category I and Category II contracts, especially WASO-level contracts. The Regional and Park staff share lead responsibility for site visits.

Timing

Typically, site visits occur after the release of the prospectus. In some circumstances, however, the Service may need to conduct a site visit prior to the release of a prospectus when seasonal and climate issues require the closure of Concession Facilities before issuing the prospectus. In those circumstances, site visits provide an orientation and overview since the attendees will not have access to the contents of the prospectus and the requirements of the Draft Contract.

When a site visit occurs after release of the prospectus, the Service should allow sufficient time (generally two to three weeks) for interested parties to review the prospectus, understand the opportunity, and formulate questions. In addition, the Service must conduct the site visit before the deadline for submitting questions to provide time for written responses to questions that arise during the site visit as well as to provide time for interested parties to submit additional questions.

As necessary, the Service coordinates the site visit with the incumbent concessioner well in advance to minimize operational disruptions. As stated above, the fedbizopps.gov notice of the availability of the prospectus should include information about the site visit. This information also appears in the prospectus and on any website where the Service posts the prospectus. If information about the site visit changes, the Regional Office must notify individuals and businesses that have requested copies of or downloaded the prospectus and also post notice on fedbizopps.gov. The Service also may announce the site visit through press releases.

Site Visit Information

The Service must provide consistent information to all potential offerors in keeping with 36 C.F.R. §§51.6 and 55.7. During site visits, Service participants may not answer questions but should collect written questions

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

Regional Offices coordinate the development and distribution of the answers to questions asked during the solicitation period.

The Proposal Instructions in the prospectus provide specific instructions for questions. The inside cover of the prospectus provides the due date for questions and the Service point-of-contact who will receive questions.

Regional and park staff coordinate the review of questions and preparation of answers including questions submitted in writing during any site visit. When questions present issues of Program-level policy, the Regional Office should involve the WASO Program in the review process. The appropriate level of the Office of the Solicitor reviews all questions and answers. Typically, the same Office of the Solicitor representative that reviewed the prospectus prior to release will review the questions and answers. The NPS must make available all questions and answers to everyone on the Recipient Log and post a notice of availability on fedbizopps.gov as an amendment to the solicitation. Finally, the Regional Office submits the questions and answers to the WASO Program for posting on the Program's website.

For WASO-level contracts, WASO Program staff must review and concur in the answers. The attorney for the WASO Program also must review answers that provide or changes substantive information in the prospectus.

When the Region receives a large volume of questions, the Region should consider sorting the questions and answers by topic and posting the responses serially. In such cases, the Region also may consider extending the solicitation period, if possible given the project's schedule, to provide sufficient time for interested parties to understand the large volume of information.

Process for WASO-level Contracts

- Involve WASO Program team members in review of questions and preparation of responses
- Submit draft responses to WASO Project Manager to coordinate review by the WASO Program and Washington Office of the Solicitor
- WASO Program concurs with responses (usually subject to comments)
- The Regional Office completes the process as described above

4.1.4 Amendment and Cancellation of Prospectuses

The Service may amend or cancel a prospectus during the solicitation period. Amendments may include corrected information, additional information (such as answers to questions submitted), or an extension of the due date for submittals. Regulations at 36 C.F.R. § 51.11 provide direction on amending, extending, or cancelling a prospectus.

Providing Notice of Amendments
The Regional Office makes amendments available to all persons listed on the Recipient Log by posting notice of such to fedbizopps.gov as amendments to the solicitation and posting the amendments to the Program's website. The Regional Office also provides copies (via e-mail) of the amendment to everyone on the Recipient Log.

Additional or Corrected Information – Legal and WASO Review
The appropriate level of the Office of the Solicitor must review all amendments. Typically, the same representative of the Office of the Solicitor that reviewed the prospectus prior to release will review the amendments. For WASO-level contracts, WASO Program staff must review and concur with amendments. The attorney for the WASO Program also must review amendments that provide or change substantive information in the prospectus.

Due Date Extensions
The Region may extend the due date of proposals. As with other amendments, the Region must post notice of extensions on fedbizopps.gov and the Program's website. For WASO-level contracts, the Region must

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 Proposal Evaluation and Selection

4.2.1 Receipt and Safeguarding of Proposals

Regional offices must establish routine processes for receiving proposals and protecting proposals.

Proposal Log
The Regional Office creates a log to inventory and document the receipt of the proposals. At a minimum, the log must include:

- Time and date the Regional Office receives the proposals
- Contact information including name, address, and telephone number for all offerors
- Whether the offerors signed the transmittal letters
- Number of hard copies and electronic copies included with each proposal
- Method of delivery (e.g., hand delivered, Federal Express, etc.).

One Regional Office employee must sign a certification as to the accuracy of this information and another must witness the signature.

Late Proposals
If the Regional Office receives a proposal after the deadline, the Regional Concession Chief must inform the Regional Director. The Regional Director may accept a proposal submitted shortly after the deadline if extenuating circumstances warrant. Such extenuating circumstances could include adverse weather conditions, unusual traffic delays, and similar events beyond the control of the offeror. "Shortly" typically means one or two days following the deadline depending on the nature of the extenuating circumstances.

When the Regional Director chooses to accept a proposal submitted beyond the deadline, the Regional Concession Chief must note the basis for such decision on the Proposal Log. When the Regional Director chooses not to accept a proposal submitted beyond the deadline, the Regional Concession Chief must return the unopened proposal to the offeror with a written explanation of why the Regional Director did not accept it.

Securing Proposals
The Service must keep all proposals in its possession secure at all times. During panel deliberations, the panel chair and Regional Concession Chief must implement procedures to maintain the security of the proposals. After the panel deliberations conclude, the Regional Chief must continue to secure all proposals. After the Service has awarded the new contract, the Regional Chief must retain one copy of each proposal for the administrative record, provide one copy of the successful proposal to Park staff to maintain for the term of the contract, and either destroy the remaining copies or return them to the offerors at their expense. The Region and Park Offices must continue to secure the proposals to protect the proprietary and other confidential information they contain.

4.2.2 Evaluation Panels

Regulations at 36 C.F.R. Part 51 require the Director to evaluate and score proposals on the basis of the primary and secondary selection factors contained in a particular prospectus. The score for each selection factor must reflect the determined merits of a proposal in response to the selection factors and in comparison to the other proposals received.

The Director has implemented this requirement through a process using evaluation panels. Evaluation panels review and analyze proposals and prepare a well-documented narrative evaluation, including recommended scores. All panel members and advisors must perform their responsibilities without actual or apparent conflicts of interest or bias. In addition, all panel members and advisors must maintain objectivity while reviewing proposals and not prejudge the merits of any proposal.

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

- Regional Chief submits proposed panel membership, including proposed panel chair, to WASO Branch Chief, Planning and Development, to coordinate review by the WASO Program Chief
- WASO Program Chief responds to the request
- Regional Chief submits formal memorandum requesting Program Chief Approval
- WASO Program prepares approval memo
- WASO Program transmits signed approval memo to the Regional Director and Regional Concession Chief

4.2.4 Panel Responsibilities and Procedures

Panel members (including technical advisors assigned to specific selection factors) review and analyze proposals based on the five principal selection factors and any secondary selection factors in the prospectus and prepare written narrative evaluations describing the substantive similarities and differences among the various proposals, explaining why a proposal is considered superior or inferior to others, and recommending scores for each offeror.

The Program's standard proposal instructions describe how the panel evaluates proposals. In summary, panel members review each proposal under the selection factors published in the prospectus. The panel must identify the pertinent information submitted in each proposal and determine a narrative and numeric score for each response, supported by a narrative analysis. For each selection factor, the panel creates a narrative explanation of the strengths and weaknesses of each subfactor and a summary comparison of the proposals. Panel members should not recite the content of the proposals, but glean the substantive information that distinguishes one proposal from the others. Panel members must then perform a critical analysis to identify and explain the differences among the proposals and explain why each proposal is better or worse than the others.

Generally, panel members consider only the information contained in the proposals; however, the standard proposal instructions allow the Service to consider other information relevant to the proposal. If a panel member has information he or she believes important for the decision-maker to know, he or she should bring it to the attention of the panel chair and Regional Chief without discussing it with other panel members. The Regional Chief should consider verifying this information and whether to attempt to locate similar information about other offerors (depending on the nature of the information). Unless the Regional Chief verifies the information, such information cannot be presented to the panel. The Regional Chief should consult with the Office of the Solicitor and the WASO Branch Chief, Planning and Development, in determining whether to bring the additional information to the attention of the panel. Factors to consider in making this determination include the reliability of the information including the source and nature of the information and the relevance to the issues under consideration.

As a standard practice, proposal packages request offerors to submit information about violations and other adverse regulatory infractions. In some circumstances, the Service has access to regulatory agency databases to verify what an offeror reports (or fails to report). For example, the U.S. Coast Guard maintains records of marine incidents involving vessels of certain sizes. If the Regional Chief believes such verification would benefit a project, he or she should undertake that process for all offerors prior to convening the panel and then share the information with the panel.

Panel members reach consensus on the scores assigned for each selection factor that reflect the merits of the proposal in comparison to the other proposals. The panel determines the narrative score (poor, fair, good, very good, excellent) for each subfactor and then assigns the numeric score for the entire selection factor based on the overall merits of the entire selection factor. The narrative score will not necessarily correlate to a number score although any discrepancy should be apparent in the narrative. Unless specifically stated in the proposal package, all subfactors carry the same weight in determining the numeric score for the selection factor. Regulations in 36 C.F.R. Part 51 describe the possible scores for each selection factor.

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

- 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

4.2.5 Determination of Responsiveness

As explained in 36 C.F.R. §51.3 and the proposal instructions, a responsive proposal is one that:

- Is submitted timely
- Is determined by the deciding official as agreeing to all of the minimum requirements of the draft concession contract contained in the prospectus
- Provides the information required by the prospectus

When determining whether or not a proposal is responsive, the deciding official must consult with the Office of the Solicitor. The deciding official must reject any nonresponsive proposal. Although the panel does not have the authority to make a determination of responsiveness, the written evaluation may highlight information (or the lack of information) the deciding official may want to consider in determining responsiveness. In addition, if the panel chair and Regional Chief believe a proposal is so deficient as to prevent an effective evaluation, they may ask the deciding official to make a determination of non-responsiveness while the panel process is underway.

A proposal that inadequately responds to one or more selection factors may not result in a determination that such proposal is non-responsive. Even circumstances that warrant a low score (including assigning zero points) may not determine the responsiveness of the proposal. Likewise, a failure to submit some information requested in a prospectus may not necessarily result in determining a proposal is nonresponsive. Rather, the deciding official must determine whether the requested information not provided is material to an effective evaluation of the proposal under the applicable selection factor.

For WASO-level contracts, the Regional Director's formal recommendation of a selection must include a recommendation on finding whether each submitted proposal was responsive. Prior to submitting the Regional Director's recommendation that a proposal is non-responsive, the Region Chief must consult with the WASO Program (primarily the Branch Chief, Planning and Development) to discuss the circumstances. When recommending a finding that a proposal is nonresponsive, the Regional Director must explain the circumstances supporting such recommendation.

4.2.6 Selection of the Best Proposal When Two or More Proposals Receive the Same Highest Score

The regulation at 36 C.F.R. § 51.16 requires the NPS to select the responsive proposal with the highest cumulative point score as the best proposal. (See Section 4.2.7 below if the incumbent concessioner has a right of preference). If two or more responsive proposals receive the same highest point score, 36 C.F.R. § 51.16 describes what the deciding official must consider in breaking a tie and selecting the best proposal. The deciding official must document what he or she considered in breaking the tie and selecting the best proposal. In all cases in which the deciding official must break a tie, the Regional Chief should consult with the WASO Program Chief. For WASO-level contracts, the Regional Director must recommend to the Associate Director, Business Services, the factors to consider in breaking the tie.

Process for WASO-Level Contracts

- Regional Chief completes policy review and appropriate representative of the Office of the Solicitor completes legal review of the evaluation

- 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

- 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 the determination of responsiveness and identification of the terms of the best proposal for formal approval by the Associate Director, Business Services
- 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
- The Regional Chief and Regional Director complete the process of notifying the incumbent preferred offeror as outlined above. When submitting the contract for approval (see Section 4.3 below), the Regional Director must include the determinations as to 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 matched all the better terms and conditions of the highest scoring proposal.

4.2.8 Selection Notification

The Regional Director notifies the offerors of the selection in writing promptly after the deciding official signs the determination memorandum. The Regional Chief should coordinate an outreach plan that will allow all offerors to receive near concurrent verbal notification of the decision. The outreach plan also should include press releases and contacting interested congressional offices. For WASO level contracts, the Regional Chief must prepare such a plan and share it with the Program Chief.

4.3 Post Selection Actions

A Regional Concession Chief must complete several steps before the Service may award the contract. We summarize those steps here and explain them in more detail below.

While the panel chair completes the panel evaluation document, the Regional Chief coordinates the process of incorporating the terms of the better offer into the contract. Ideally, those reviewing the panel evaluation will review the contract incorporating the terms of the better offer concurrently. The contract incorporating the terms of the better offer requires the same reviews, policy and legal, as does the panel evaluation.

After the contract has undergone final policy and legal review, the Regional Director transmits the contract to the selected offeror to review and sign. The transmittal letter must state the amount of time the selected offeror has to review and sign the contract and return it to the Regional Director. Generally, a selected offeror should have 14 calendar days to review contracts with minor changes, and up to 30 calendar days to review a contract with a number of changes. When the selected offeror signs the contract, the NPS considers the contract "executed."

Regional Level Contracts: The Service should generate one original contract and exhibits for signature by both parties to the contract. After receiving the executed contract from the selected offeror, the Regional Director "awards" the contract by signing it.

WASO-Level Contracts: After receiving the executed contract from the selected offeror, the Regional Chief sends five copies (none with original signatures) to the WASO Program to prepare to submit to Congress for the 60-day notice period. The Program prepares the necessary transmittal correspondence and insures delivery to the appropriate Congressional offices. This entire process generally takes about 75 days to obtain the Director's signature on the transmittal letters, transmit to Congress, and allow the notice period to

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

Director submits the contract for formal approval. Once approved by the Associate Director, Business Services, the Regional Director transmits the contract to the successful offeror for execution.

The Regional Director signs all regional-level contracts. Usually, as part of the formal approval process for WASO-level contracts, the Regional Director receives delegated authority to award WASO-level contracts. After receiving the executed contract from the new concessioner (and for WASO-level contracts, after the conclusion of the Congressional notice period), the Regional Director signs the contract at the end of the main body of the contract and in exhibits assigning federal property to the concessioner and setting out the value of Leasehold Surrender Interest. The Operating and Maintenance Plans are not signed, but may contain effective dates to reflect changes from year to year.

Process for WASO-Level Contracts

- Regional Chief completes policy review and appropriate representative of the Office of the Solicitor completes legal review of the contract
- Regional Chief submits the draft contract to the Program (Branch Chief, Planning and Development) for informal policy and to coordinate legal review
- Branch Chief, Planning and Development, provides policy and legal comments to the Regional Chief
- Regional Director submits the contract for formal approval by the Associate Director, Business Services (through the Program Chief) reflecting comments from the WASO policy and legal review
- The Program prepares the approval memorandum, completes the formal policy review, and obtains formal legal review from the Office of the Solicitor
- The Program sends the signed approval memorandum to the Regional Director and Regional Chief
- Regional Director transmits the approved contract to the selected offeror for execution identifying the specific amount of time the selected offeror has to review and execute the contract
- Upon receipt of the executed contract, the Regional Chief sends 5 copies (not with original signatures) to the WASO Program for Congressional notification
- The Program prepares transmittal letters, obtains the Director's signature, and delivers the contracts to the appropriate Congressional offices
- Upon expiration of the 60-day review period, the Program notifies the Regional Chief that the Regional Director may award the contract (if the Director has delegated signature authority)

4.3.2 Contract Distribution

The Regional Chief retains the original contract including the exhibits in the region's files. The Regional Chief makes and distributes three copies of the awarded contract and exhibits as follows: to the Concessioner, to the Superintendent, and to the WASO Program. The Regional Chief also transmits the WASO Program an electronic copy of the contract and its exhibits.

4.3.3 Debriefing Policy Procedures

The 1998 Concessions Act and its implementing regulations (36 C.F.R. Part 51) do not specifically address debriefing offerors submitting proposals. In order to assist potential offerors to improve future proposals, the Service, in accordance with the following procedures, provides offerors an opportunity for either a pre-award or post-award debriefing regarding the Service evaluation of an offeror's proposal. The offeror may not use the debriefing process as an opportunity to negotiate, amend, supplement, or reevaluate any proposal.

Responsibility

Regional Chiefs have the primary responsibility for responding to requests for debriefings, and for WASO-level contracts must submit a proposed debriefing response to the WASO Program for review before transmitting it to the requesting offeror.

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.

Pre-award debriefings will not include:

- The number and identity of other offerors
- The specific content of any proposal
- The point scores assigned to any proposal
- Any information prohibited from disclosure by law, including, without limitation, commercial and financial information that is privileged or confidential
- Any information regarding Principal Selection Factor 5

Post-award Debriefings

A post-award debriefing occurs after the award of the contract. If an offeror submits a written request for a post-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 contract award.

Content of Post-Award Debriefings

Post-award debriefings will include:

- The number and identity of offerors (including the selected offeror);
- A general comparison of the quality of the debriefed offeror's proposal to the selected proposal based on the selection factors included in the applicable prospectus;
- The point scores assigned under the applicable selection factors of the debriefed offeror's proposal and of the proposal awarded the concession contract; and
- A description of the selection evaluation process.

Post-award debriefings will not include:

- The specific content of any proposal, unless the debriefing is for the successful offeror;
- A general comparison of the quality of the other proposals; and
- Any information prohibited from disclosure by law, including, without limitation, commercial and financial information that is privileged or confidential.

4.3.4 Administrative Record

The Regional Office maintains the administrative record for the solicitation and award of concession contracts. See Chapter 1, Administrative Record, for more detail.

4.3.5 Appeals to the Selection of a Best Offer for a Concession Contract

The Service provides no process for an unsuccessful offeror to file an administrative appeal of the decision to select another offeror or cancel a prospectus.

4.4 Temporary Contracts

As part of the1998 Act, the Service may award a temporary contract with a term not to exceed three years. The Service cannot extend a temporary contract beyond the three years.

The need to consider a temporary concession contract arises in different situations. Sometimes an incumbent concessioner will not agree to a continuation or extension beyond the original term of the concession contract. In other circumstances, the Service may have terminated a concessioner for contractual reasons. In these and similar situations, the Service often does not have sufficient time to develop and solicit a prospectus and award a new long-term concession contract. In order to avoid the interruption of visitor services, the Service may award, without public solicitation, a temporary concession contract.

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

bidders about their experience in providing the services and demonstrating the financial capacity to start and sustain the operations. The Regional Chief must publish notice of the RFQ on fedbizopps.gov, post the RFQ on the WASO Program's website, and otherwise advertise it to make interested parties aware of the opportunity. Typically the response period is fairly short, usually 2 to 3 weeks. The Regional Chief facilitates the review of the submitted information and develops a recommendation.

Process:

- Regional Chief explores alternatives to temporary contract
- Regional Chief identifies the need for a temporary contract
- Regional Chief explores interest in providing the services and determines whether to issue a RFQ
- Regional Chief submits to the WASO program for informal policy and legal review, a draft request memorandum, a briefing paper explaining the alternatives to a temporary contract and the reasons supporting the selection of the entity recommended for award of the temporary contract (or the qualifications sought through an RFQ), and draft contract documents
- WASO Program reviews the drafts, obtains informal legal review, and sends comments to the Regional Chief
- Regional Director formally requests approval to award a temporary contract including the briefing statement and the contract documents reflecting WASO comments
- WASO Program prepares approval memorandum, obtains legal review, and sends approval memorandum to the Regional Director
- WASO Program publishes Federal Register notice
- Regional Director awards the temporary contract as delegated
- When using the RFQ process, the Regional Chief advertises the RFQ as explained above, selects an appropriate operator, and submits that selection for approval by the Associate Director, Business Services. Before advertising the RFQ, the Regional Director must have an approved temporary concession contract to include in the RFQ.

4.5 Sole Source Long-term Contracts

Only the Director, with the prior written approval of the Secretary or Assistant Secretary for Fish and Wildlife and Parks, may award a concession contract without competition (other than a temporary contract) in extraordinary circumstances where compelling and equitable considerations require the award of a concession contract to a particular qualified person in the public interest.

When providing this authority, Congress established a difficult burden to justify the award of a long-term contract without competition. The legislative history of this section describes two situations where the Service could consider such an award. One example is awarding such a contract for a single contract term when a new park unit or land is added to the National Park System and an existing business is providing visitor services the Service wants to continue. The other circumstances is when a concessioner operating as a sole proprietor dies and his or her surviving spouse wishes, and is qualified, to continue the business.

Whenever a Regional Director and Regional Chief believe a situation exists that supports the award of a contract of this nature, they should consult with the WASO Program office to determine how to proceed. Ultimately, the Regional Director must submit a written request for approval of the contract with a thorough explanation of the situation justifying the award of a long-term sole source contract. This justification requires the legal review and approval of the Office of the Solicitor advising that Regional Office. The request also must include a draft contract for approval.

Process:

- Regional Chief identifies the need for a long-term sole source contract

- 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
○ **Monday, June 1** – Travel Day ○ **Tuesday, June 2 - 8:30am Panel Start** ▪ Orientation: Park Overview & Co-chairs overview of logistics, guidance, and expectations ▪ Start reading proposals ○ **Wednesday, June 2** ▪ Finish reading proposals ▪ Begin matrix note taking ○ **Thursday, June 3** ▪ Complete matrix note taking ▪ Start writing draft summaries ○ **Friday, June 4** ▪ Finish writing draft summaries ▪ Start presentation chart for deliberations Daily check-in calls Wednesday – Friday at 2pm MT.	○ **Monday, June 8** ▪ Finish presentation chart ▪ Start draft comparative summaries ○ **Tuesday, June 2** ▪ Continue draft comparative summaries ▪ Start deliberations (after lunch) ○ **Wednesday, June 2** ▪ Continue deliberations ○ **Thursday, June 3** ▪ Finish deliberations (if necessary) ▪ Clean up summaries and comparative summaries ○ **Friday, June 4** – Travel home Daily check-in call on Monday only at 2pm MT.

Reading the Proposals

- **Understand your Subfactor.** Carefully read and understand the various parts of a subfactor. Make sure you understand the Service goal in the subfactor and don't exercise your own opinion of what the subfactor sought. For example: If the subfactor states a requirement such as the concessioner's managers must be in-park, don't assume out of park management in a nearby location suffices.
- **Know what else is being asked.** Be familiar with all the Principal and Secondary Selection Factors. Alert other panel members if there are answers to other subfactors in the response to your Subfactor. The panel may consider relevant information from anywhere in the proposal; however, this gets complicated with page limits and limitations in the subfactors, so talk to you panel chair if you are concerned.
- **Focus on your Subfactor's response but read the whole proposal.** This is time consuming but very helpful. Pick a time to do this; whether it's on the first day, or as a break during the first week, or right before deliberations start on the second week. The goal is to be familiar enough with the rest of the proposal to participate in discussions to help other panel members as they will help you.
- **Be Objective.** Everyone involved in a panel must be objective in their consideration of proposals. The evaluation must be based on what is included in an Offeror's proposal. If you know of outside information that affects or contradicts something in a proposal, talk to your panel chairs.

Taking Notes in the Matrix

- **Matrix Formatting.**
  - The evaluation templates offer a suggested format to take notes. Use it if you like, or take your notes in a way you're comfortable with. There are no requirements to use full sentences or repeat the Offeror's name in each sentence; just make sure that your notes are understandable for the panel chairs to use when they do their reviews.
  - Format your page numbers using whatever format the Offerors use for its page numbers. You don't need to reference the selection factor unless you are referencing information outside of your assigned selection factor.
- **Note Financial Commitments.** Your PSF4 panel member will check for you the financial commitments are included in an Offeror's financial projections. Talk to your PSF4 panel member on how they'd best like to receive this information to confirm.
- **Elements of a Better Offeror.** This is a term to describe commitments that a Park may wish to include in the Draft Contract should that Offeror be awarded a contract. **Please bold these commitments in your matrix.** If these commitments are outside of the scope of your question, you may still bold them but note that the commitment was not included as part of the evaluation and state the reason why. (Typically because the commitment is outside the scope of the Subfactor question asked.)

Writing Rules

- Use the following rules for writing your summaries and comparisons. Use common sense and all your school and life taught English as well. Use verbs with clear meaning, as the panel evaluation is a technical document that must be legally defensible.
  - **Why all the rules?** This will help you write a panel evaluation that clearly explains what an Offeror provided in its proposal without the appearance of incorporating a panel member's opinion. You probably will use some verbs multiple times throughout the document, such as

"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.

Instead of this	***write this***
Present or future tense The Offeror states/describes it provides sorting and waste collection.	**Past tense** The Offeror stated/described it provides sorting and waste collection.
Passive voice 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.***
They/he/she 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.
Indicated	**Stated; Described; Provided a Description.** To indicate is to suggest, while to state (etc.) represents that the Offeror said it, not the panel.
Capitalize	**Draft Contract, Park, Panel, Subfactor**
NPS	**Service**
Would	**will**
Provided	**Submitted** (ABC submitted a good proposal)
The panel felt / determined	**The panel decided / considered / noted...** The panel shouldn't have emotions and only the Director may determine something, so avoid determine.
The Offeror did not provide	**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.
Both or All Offerors	**Each** Each Offeror committed to eliminate all petroleum-based water bottles by 2014.
Offer or Bid	**Proposal**
Concessioner or Bidder	**Offeror**
Future Contract	**Draft Contract**
Current Concessioner	**incumbent**
Contract length or Duration of the Contract	**Contract term**
Draft Contract Exhibit B / Exhibit H	**Operating Plan** (for B) / **Maintenance Plan** (for H)
Selection Factor	**PSF** or **SSF**
Subfactor	Examples: **PSF1(a); SSF2(c)**

The Proposal Summary

- **Purpose.** The summary accurately reflects the Offeror's response to the subfactor question asked. While you will summarize, you must include sufficient detail to understand how the Offeror answered the Subfactor and what commitments it made to support the operation. Structure your summary to mirror how the question is asked. This will create an easy flow for future readers.
- **Identify Commitments.** It's important to differentiate between a commitments and a vague generalizations. For example, if the Offeror states it "will investigate," "may," "try," or "attempt" -- these are not commitments. If an Offeror uses one word repeatedly, such as "propose," the panel may decide to take that as a statement of commitment after discussing the issue. Ask your panel chair if you are unsure of the wording.
- **Identify what's lacking.** It is just as important to identify when an Offeror has not responded to a portion of a question. When this happens, the panel must take the blame. It is never the Offeror's fault for not providing an answer to a question or additional details to clarify a commitment. Say, "the panel was unable to locate where YYZ discussed the minimum requirements of its pastry chef." Don't say, "YYZ didn't provide the minimum requirements of its pastry chef."
- **Identify conflicts with the Draft Contract.** Make a note whenever an Offeror conflicts with the Draft Contract, typically with the Operating or Maintenance Plan. If an Offeror states, "We will replace mattresses every 9 years" but you know the operating plan stated 7 years, say this: "While YYZ stated it will replace mattresses every 9 years, the Panel noted this conflicts with the Operating Plan, which states the concessioner will replace mattresses every 7 years." This is often hard to recognize but the rest of the panel will help you as well
- **Leave out the fluff.** All companies will often include additional positive information that does not directly answer the Subfactor question asked. We call this fluff. For example, if the Subfactor is "Ability to Maintain Structures, 1) Describe your staffing plan, including numbers of employees and their qualifications....." and the proposal started with this:

  > "XXX has a rich history of stewardship and dedication to improving the condition of National Park Service buildings, regardless of their size or purpose. Through decades of operating facilities in U.S. national parks, engineering and maintenance teams of XXX have tackled countless preservation, rehabilitation, and maintenance projects..." and went on for two pages before beginning its response to the question.

  That is all fluff. It does not answer the question asked – it does not describe a staffing plan or including the number of employees or qualifications. You don't need to add this to your summary.

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."*

> ***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.

- **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."*

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.

- **Check if you are actually comparing Offerors against each other.** The easiest and most common mistake made in a first draft of a comparative is to not draft your write-up in a way that shows you are comparing Offerors.

Comparing (Paragraphs are written about topics and discuss each offeror.)	**Not comparing** (Paragraphs are written about each Offeror by topic.)
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. Each Offeror provided an equal and similar response to educating its employees on Topic 3. 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. YYZ submitted a better response than ABC regarding Topic 2 because it blah blah blah blah while ABC only blah blah blah.	YYZ submitted an **excellent** response because it provided four specific examples of the skills it committed to train its staff and included sending trainers to training school. ABC submitted **a very good** response because it only provided three specific examples of the skills. YYZ additional did some more stuff on Topic 2. ABC did some more stuff too on Topic 2. YYZ did this as well regarding Topic 3. ABC did other things regarding Topic 3.

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 and 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.