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OVERVIEW

7.1 What is the purpose of this chapter? This chapter provides requirements and procedures for soliciting and awarding contracts for concessions on U.S. Fish and Wildlife Service (Service) National Wildlife Refuge System (NWRS) sites.

7.2 What are the scope, authorities, and responsibilities for this chapter? See 630 FW 6 for information about the scope, the authorities, and responsibilities for all Service concession policies (630 FW 6 - 8).

BACKGROUND ON CONTRACTS

7.3 What is a concession contract, and how is it different from a procurement contract or a partnership agreement?

A. A concession contract is the legal instrument that binds the concessionaire and the Service to terms and conditions. The Service:

(1) Bases the contract on the minimum requirements for quantity and quality of services to fulfill the public need and form a sound business arrangement, and

(2) Incorporates the potential concessionaire's proposal as part of the contract.

B. Federal procurement contracts involve directly receiving goods or services. However, concession contracts are not Federal procurement contracts because the Service does not directly receive goods or services. The Service authorizes a privilege. Because concession contracts are not Federal procurement contracts, they are not subject to the Federal Acquisition Regulation.

C. The Service uses Friends Partnership Agreements to guide how the Service works with Friends organizations, including when they operate bookstores and other sales outlets (see Part 633 of the Service Manual). These entities are non-profit and their revenues are used to support the site's mission. In contrast, concessionaires are running operations for profit.

7.4 What are the different types of concessions and what are their contracting requirements? There are four types of concessions—major concessions, minor concessions, concession permits, and sub-concessions.

A. Major concession. A major concession is an operation of a permanent nature that generally does business using permanent structures. This type of operation requires a contract that:

(1) Is comprehensive and describes the details of managing each aspect of the required services and maintenance responsibilities relating to the concession operation,

(2) Is authorized for 5 to 20 years,

(3) Includes a provision for the concessionaire to pay us a fixed franchise fee or percentage payment of the gross receipts, and

(4) Estimates annual gross receipts exceeding $500,000.

B. Minor concession. A minor concession is an operation that requires a contract that:

(1) Is authorized for 1 to 5 years,

(2) Includes a provision for the concessionaire to pay us a fixed franchise fee or percentage payment of the gross receipts,

(3) Limits facility construction to those of a temporary nature and requires the concessionaire to vacate (if Government-owned) or remove (if privately owned) structures at the end of the contract term, and

(4) Estimates annual gross receipts up to $500,000.

C. Concession permit.

(1) A concession permit is a legal instrument that:

(a) Allows a permit term of up to 1 year,

(b) Is based on a fixed franchise fee or a percentage of the gross profit,

(c) May require a small capital investment for operations (i.e., equip and maintain concessionaire-furnished supplies and facility improvements), and

(d) May be awarded by a Project Leader based on established permit criteria.

(2) Concession permits are not subject to public notice and competition requirements unless general interest is expressed.

(3) Concession permits have gross receipts that do not exceed $100,000 annually.

D. Sub-concession. A sub-concession is a second-tier operation that augments a primary concessionaire's facilities or services. The Assistant Regional Director (ARD) - NWRS or his/her designee must pre-approve a sub-concession. The ARD may allow sub-concession contracts under the following conditions:

(1) The proposed sub-concession operation is essential to provide better service to the public,

(2) The primary concessionaire or the Service can furnish the basic facilities needed to provide the service, and

(3) The primary concessionaire:

(a) Pays all franchise fees or percentage payments based on primary and sub-concession total gross receipts, and

(b) Includes the sub-concession's annual financial report with its financial documents.

7.5 When does the Service solicit for concession contracts?

A. The Service requests proposals from parties interested in providing concessions when one of the following conditions applies:

(1) The Project Leader identifies a new concession opportunity for a site,

(2) The Project Leader/Concession Manager determines an existing concessionaire is unable to satisfactorily provide the requirements of the current contract,

(3) An existing concessionaire's contract is due to expire, or

(4) An existing concessionaire no longer wants to operate the business.

B. When a Project Leader/Concession Manager wants to solicit new concessions, he/she must go through the appropriate process for getting approval from the Regional Director.

BEFORE AWARD

7.6 What does soliciting and awarding concession contracts involve? We award contracts for concession operations using competitive solicitations. The steps in that process are:

A. Issuing a public notice (see section 7.7),

B. Issuing a prospectus (see section 7.8),

C. Evaluating proposals and awarding the contract (see section 7.9),

D. Writing the contract (see sections 7.10), and

E. Administering the contract (see 630 FW 8).

7.7 What is a public notice, and what are the guidelines for issuing one?

A. A public notice is an announcement of a concession opportunity available for any interested party. This typically includes putting announcements in newspapers or other appropriate methods effective for the area or concession type, and listing them on the Federal Business Opportunity (FedBizOpps) website.

B. When the Project Leader plans to establish a concession operation (or continue an existing operation), the Concession Manager prepares a prospectus (see section 7.8) and notifies the public of the available opportunity. Existing and previous concessionaires and any other interested parties may request a copy of the public notice (see Exhibit 1).

C. The public notice should include:

(1) The site name,

(2) The concession opportunity,

(3) Time and date proposals are due,

(4) Date of scheduled facility tour, and

(5) The prospectus itself or contact information for how to get a copy of the prospectus.

D. The Concession Manager must publish public notices in the following:

(1) At least one newspaper of general circulation in the state,

(2) At least one local newspaper, if available,

(3) On the FedBizOpps website, or

(4) Any other appropriate method effective for the area or concession type.

E. The Concession Manager may also publish notices using other methods of advertising, including, but not limited to:

(1) Posting the notice in local post offices,

(2) Advertising in trade journals, and

(3) Sending notices to Chambers of Commerce and other local organizations.

F. Responses to the public notices are not binding. All offers are subject to revision and modification in the negotiating process until the parties sign the concession contract.

7.8 What is a prospectus, and what are the guidelines for preparing it?

A. A prospectus is a description of the concession and is the primary method for soliciting and selecting a concessionaire for commercial visitor services (see Exhibit 2 for a sample prospectus).

(1) The prospectus includes:

(a) Requirements for the desired visitor services, e.g., campsite rentals; interpretive guided tours; and canoe, boat, and bike rentals;

(b) An estimate of annual gross receipts for the concession;

(c) The evaluation criteria for contract selection;

(d) Applicable terms and conditions; and

(e) A plan for how to mitigate any risk(s).

(2) In addition to the items above, the prospectus must accurately define the scope of the operations and include provisions for the following:

(a) Information on how interested parties can schedule at least one site visit. The Concession Manager must conduct all tours at least 3 weeks prior to the proposal's due date.

(b) Clearly defined evaluation criteria for the concession contract (see Exhibit 2).

(c) Description of the land and water areas reserved for the concession operation. The area should be no greater than necessary for the concessionaire's operation.

(d) Rental fees equal to those that the private sector would charge for the operation of comparable services on private lands in the local area.

(e) No possessory interest in lands, waters, or facilities. When buildings or other structures must be built, the ARD - NWRS and the Regional Engineering office must approve facilities prior to construction. Any facilities built on Service lands or waters become Service property. See User Guide AM-14: Attachment G for information on the Service's current footprint rules.

(f) A stipulation that current concessionaires participate in a contract closeout and turnover if the Service awards a follow-on contract for a new concession. This provision helps to ensure a seamless transition of services to the public.

(g) Descriptions of assignments of Government-owned property, either real or personal, to the concessionaire. The Concession Manager:

(i) Must describe such assignments specifically and accurately using official asset or property numbers,

(ii) May not offset the negotiated concessionaire's fees for operation and maintenance of Government-owned property, and

(iii) Must conduct an annual inventory of Government-owned personal property.

(h) The following three statements, which later become part of the contract.

(i) **"**Zero Tolerance of Discrimination: You must not discriminate against anyone on the basis of race, color, national origin, sex (including pregnancy, gender identity, transgender status, and sexual orientation), religion, disability, age, status as a parent, or genetic information, with regard to any program, activity, or service, including employment. You are subject to the following Equal Opportunity Employment laws and policies:

- Title VII of the Civil Rights Act of 1964;
- Age Discrimination Act of 1967;
- Rehabilitation Act of 1973;
- Americans with Disabilities Act of 1990 (amended in 2008 to broaden the definition of disability);
- Genetic Information Act of 2008;
- Executive Order (EO) 13152, Further Amendment to Executive Order 11478, Equal Employment Opportunity in Federal Government **(**Parental Status);
- EO 13672, Sexual Orientation; and
- Personnel Bulletin 18-01 "Prevention and Elimination of Harassing Conduct."

(ii) **"**Environmental Stewardship: You must:
-Use the U.S. Environmental Protection Agency's "Guiding Principles for Environmentally Preferable Purchasing" as a reference when purchasing equipment, construction materials, and other products.

-These environmentally preferable materials and processes include:

- Post-consumer recycled materials;
- Materials that do not require care with toxic chemicals;
- Equipment and product life-cycle analysis; and
- Minimization of pesticides, persistent toxic chemicals, carcinogens, and invasive species."

(iii) "The Project Leader's appropriate use and compatibility determinations will govern the concession activity."

B. The Concession Manager works with the servicing Contracting staff to develop the prospectus.

(1) The Concession Manager must post the prospectus as an attachment to the public notice or provide it to interested parties upon their request.

(2) A clearly defined prospectus helps the evaluation panel to evaluate proposals and recommend an award. The Service may conduct discussions and negotiations with potential concessionaires to amend schedules, technical requirements, or other terms of the proposed contract.

(3) A prospectus may require concessionaires to maintain Government-owned land and property to a certain extent. The prospectus should also explain that the concessionaire will have to comply with all rules, regulations, and approved management plans.

7.9 How does the Service evaluate proposals? Proposal evaluation is an assessment of each bidder's ability to successfully operate the concession contract.

A. The Concession Manager should work with the Project Leader and Regional staff to appoint an evaluation panel of three to five Service employees who are knowledgeable in concession management issues. The panel evaluates all proposals and assesses their relative qualities using the evaluation criteria specified in the prospectus (see Exhibit 2).

(1) Each evaluator must sign a conflict of interest statement. Concession Managers, evaluators, and staff must treat all discussions and correspondence as confidential and must not disclose any information to others who do not have a need to know.

(2) Evaluators first work alone to evaluate each proposal using weighted factors. Evaluators must document the relative strengths, deficiencies, significant weaknesses, and risks to support proposal evaluations.

B. Evaluation criteria must include, but are not limited to, the following elements:

(1) Past performance,

(2) Financial status and capability,

(3) Operating and maintenance plans,

(4) Fixed franchise fee or percentage of gross income paid to the Government, or both,

(5) References,

(6) Demonstrated experience,

(7) Terms and conditions relating to quality of service to our visitors, and

(8) Environmental stewardship.

C. After all proposals are received, the panel may request that a Contracting Officer meet with bidders to allow them to clarify and amend aspects of their proposals to resolve minor or clerical errors. The Service will not allow a bidder to substantively amend or supplement a responsive proposal without allowing all responsive bidders to amend or supplement their proposals.

D. After individually evaluating the proposals, the panel convenes to rank them. The highest collective average scores of the panel serve as the final ranking. If there is a tie score, the panel must reevaluate the tied proposals and may negotiate with the prospective concessionaires.

E. After the panel selects the winner, the Contracting Officer must notify all bidders in writing within 5 business days of the selection. Unsuccessful bidders may request a debriefing within 3 business days after notification. The Contracting Officer will schedule debriefings within 15 business days.

F. The Contracting Officer and Concession Manager negotiate with the successful bidder to finalize the contract (see section 7.10 for what the contract includes).

(1) Subsequent discussions and negotiations should ensure that all parties are familiar with the operating requirements and the terms and conditions of the proposed contract.

(2) The Service prefers holding negotiations face-to-face, but the Service may conduct negotiations in writing or by telephone when a face-to-face interview is not possible.

(3) After the Service completes negotiations, the Contracting Officer awards the contract.

7.10 What is included in a concession contract? The Service uses standard language in all concession contracts. The Regional Director must approve in writing any deviation in the language that the Concession Manager determines is essential.

A. Amendments or other agreements developed after the Service issues a contract must be consistent with current policies, directives, and guidelines unless approved by the Director. If an amendment gives the concessionaire anything of value, the Service must receive at least its equivalent value in goods, services, or fees.

B. The Service uses standard clauses to ensure uniformity of concession contracts. At a minimum, each concession contract must incorporate clauses that address the following:

(1) Applicable laws and regulations;

(2) Health and safety;

(3) Prohibited uses;

(4) Preservation of natural and cultural resources;

(5) Fee collection;

(6) Protection of Government-furnished and personal property;

(7) Trademark and service mark;

(8) Financial reporting requirements and the Service's right to audit records;

(9) Indemnification (hold harmless clause);

(10) The Service's right to enter premises and conduct inspections on facilities;

(11) Payment of incurred fixed and variable costs such as utilities;

(12) Grievances, disputes, and other claims;

(13) Cancellation/termination for default;

(14) Cancellation/termination for convenience of the Government;

(15) Cooperation with authorities in emergencies;

(16) Minimum requirements for closeouts and turnover;

(17) Nondiscrimination clauses;

(18) Responsibility for losses and expenses incurred by facility closures due to conditions beyond the Service's control;

(19) Contract modification procedures, including business expansion;

(20) Review of Appropriate Use and Compatibility Determinations; and

(21) The expected level of service and quality (appearance, courtesy, knowledge, etc.).

C. The Service may include special provisions in the contract that protect Service interests in a concession operation. For example, depending on the operation, the Service must require:

(1) The concessionaire to secure public liability insurance to protect both it and the Government according to good business practices. This insurance must not be less than what state or local law requires or the customary amount that the area business community carries. The minimum public liability coverage must not be less than $1,000,000. The concessionaire must co-name the Government as co-insured in each insurance policy for a concession operation on Government-owned lands and waters.

(2) The concessionaire to secure personal property/contents insurance for the replacement value of the concessionaire's property. The concessionaire should provide property coverage for replacement value of Service facilities where they operate.

(3) The concessionaire to secure workers' compensation or other required insurance for all employees.

(4) The concessionaire to maintain current validation/certification of all necessary types of insurance.

(5) The Concession Manager to approve all advertising (including television, radio, and print advertisements) that promote their on-site concession operations.

(6) The concessionaire to not use Government property to advertise or promote other businesses that are not associated with its on-site concession operations.

(7) The concessionaire to not use a Government facility's name to endorse an off-site business.

D. Concession contracts require the cooperative support of the concessionaire. The Service may require attendance at meetings and workshops. The Service does not pay the cost for the concessionaire or his/her employees to attend such meetings.

AFTER AWARD

7.11 How does the Service get money from providing a concessionaire the privilege of a concession? The Service puts fee payment requirements in the concession contract, which are deposited in the Service's Refuge Revenue Sharing account. There are two types of fees—franchise fees and percentage payments.

A. Franchise fee. The franchise fee is a good faith payment. It is a fixed rate fee payable on an annual basis at the beginning of the contract year.

B. Percentage payment. Percentage payments are fees based on the concessionaire's gross receipts for goods and services rendered. The concessionaire offers a proposed percentage payment of its gross receipts in the proposal. The minimum acceptable percentage of gross receipts is 5 percent for a major concession and 3 to 5 percent for a minor concession and concession permit (see section 7.4). The Service must review these percentages every 5 years to determine if we need to adjust them to provide the greatest benefit to the Service.

C. As required by 31 U.S.C. 3302, the Service must deposit all revenues generated by concessions into the Service's Refuge Revenue Sharing account without deduction for any charge or claim (i.e., no funds may be withheld for any purpose).

7.12 Can the Service also recover administrative costs it incurs for allowing a concession to operate? Yes. The Service may recover necessary expenses related to concession administration, operations, construction, and maintenance from those revenues generated by public recreation-related concessions, as stipulated in subsection (b) of 16 U.S.C. 715s.

A. The Service must deposit recovery costs into the Service's Refuge Revenue Sharing account without deduction for any charge or claim (i.e., no funds may be withheld for any purpose). At the beginning of each fiscal year, the Director, acting through the Chief-NWRS, uses information that the ARDs–NWRS provide to determine the appropriate amount of cost recovery for necessary expenses associated with prior year concession revenues. The Chief, Division of Budget, Performance & Workforce, in Headquarters, allocates funds to the ARDs–NWRS for cost recovery. ARDs–NWRS disburse funds that were recovered to field stations.

B. Necessary expenses are expenses directly associated with Service administration of the concession contract. This includes inspection of concessionaire operation, maintenance, and construction costs for facilities; costs of negotiations; and concessionaire selection. Necessary expenses also include Service costs to maintain or construct facilities not included in the contract, but that are necessary for the concession to function. For example, the cost to maintain a road across refuge land to a concession area is a necessary expense if the sole purpose of the road is to promote the concession.

/sgd/ Margaret Everson
PRINCIPAL DEPUTY DIRECTOR

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