

monly known as the National Park Service Concessions Policy Act; 16 U.S.C. 20 et seq.) is repealed. The repeal of such Act shall not affect the validity of any concessions contract or permit entered into under such Act, but the provisions of this title [enacting former sections 5951 to 5966 of Title 16, Conservation, which were repealed and restated in sections 101911 et seq. and 101524 of this title, amending former sections 1a-7 and 3 of Title 16, repealing section 17b-1 and subchapter IV of chapter 1 of Title 16, and enacting provisions set out as notes under this section and sections 100101 and 101911 of this title] shall apply to any such contract or permit except to the extent such provisions are inconsistent with the terms and conditions of any such contract or permit. References in this title to concessions contracts awarded under authority of such Act also apply to concessions permits awarded under such authority."

§ 101913. Award of concession contracts

In furtherance of the findings and policy stated in section 101912 of this title, and except as provided by this subchapter or otherwise authorized by law, the Secretary shall utilize concession contracts to authorize a person, corporation, or other entity to provide accommodations, facilities, and services to visitors to System units. Concession contracts shall be awarded as follows:

(1) **COMPETITIVE SELECTION PROCESS.**—Except as otherwise provided in this section, all proposed concession contracts shall be awarded by the Secretary to the person, corporation, or other entity submitting the best proposal, as determined by the Secretary through a competitive selection process. The competitive process shall include simplified procedures for small, individually-owned entities seeking award of a concession contract.

(2) **SOLICITATION OF PROPOSALS.**—Except as otherwise provided in this section, prior to awarding a new concession contract (including renewals or extensions of existing concession contracts) the Secretary—

(A) shall publicly solicit proposals for the concession contract; and

(B) in connection with the solicitation, shall—

(i) prepare a prospectus and publish notice of its availability at least once in local or national newspapers or trade publications, by electronic means, or both, as appropriate; and

(ii) make the prospectus available on request to all interested persons.

(3) **INFORMATION TO BE INCLUDED IN PROSPECTUS.**—The prospectus shall include the following information:

(A) The minimum requirements for the contract as set forth in paragraph (4).

(B) The terms and conditions of any existing concession contract relating to the services and facilities to be provided, including all fees and other forms of compensation provided to the United States by the concessioner.

(C) Other authorized facilities or services that may be provided in a proposal.

(D) Facilities and services to be provided by the Secretary to the concessioner, including public access, utilities, and buildings.

(E) An estimate of the amount of compensation due an existing concessioner from

a new concessioner under the terms of a prior concession contract.

(F) A statement as to the weight to be given to each selection factor identified in the prospectus and the relative importance of those factors in the selection process.

(G) Other information related to the proposed concession operation that is provided to the Secretary pursuant to a concession contract or is otherwise available to the Secretary, as the Secretary determines is necessary to allow for the submission of competitive proposals.

(H) Where applicable, a description of a preferential right to the renewal of the proposed concession contract held by an existing concessioner as set forth in paragraph (7).

(4) **CONSIDERATION OF PROPOSALS.**—

(A) **MINIMUM REQUIREMENTS.**—No proposal shall be considered that fails to meet the minimum requirements as determined by the Secretary. The minimum requirements shall include the following:

(i) The minimum acceptable franchise fee or other forms of consideration to the Federal Government.

(ii) Any facilities, services, or capital investment required to be provided by the concessioner.

(iii) Measures necessary to ensure the protection, conservation, and preservation of resources of the System unit.

(B) **REJECTION OF PROPOSAL.**—The Secretary shall reject any proposal, regardless of the franchise fee offered, if the Secretary determines that—

(i) the person, corporation, or entity is not qualified or is not likely to provide satisfactory service; or

(ii) the proposal is not responsive to the objectives of protecting and preserving resources of the System unit and of providing necessary and appropriate facilities and services to the public at reasonable rates.

(C) **ALL PROPOSALS FAIL TO MEET MINIMUM¹ REQUIREMENTS OR ARE REJECTED.**—If all proposals submitted to the Secretary fail to meet the minimum requirements or are rejected by the Secretary, the Secretary shall establish new minimum contract requirements and re-initiate the competitive selection process pursuant to this section.

(D) **TERMS AND CONDITIONS MATERIALLY AMENDED OR NOT INCORPORATED IN CONTRACT.**—The Secretary may not execute a concession contract that materially amends or does not incorporate the proposed terms and conditions of the concession contract as set forth in the applicable prospectus. If proposed material amendments or changes are considered appropriate by the Secretary, the Secretary shall resolicit offers for the concession contract incorporating the material amendments or changes.

(5) **SELECTION OF THE BEST PROPOSAL.**—

¹ So in original. Probably should be "MINIMUM".

(A) **FACTORS IN SELECTION.**—In selecting the best proposal, the Secretary shall consider the following principal factors:

(i) The responsiveness of the proposal to the objectives of protecting, conserving, and preserving resources of the System unit and of providing necessary and appropriate facilities and services to the public at reasonable rates.

(ii) The experience and related background of the person, corporation, or entity submitting the proposal, including the past performance and expertise of the person, corporation or entity in providing the same or similar facilities or services.

(iii) The financial capability of the person, corporation, or entity submitting the proposal.

(iv) The proposed franchise fee, except that consideration of revenue to the United States shall be subordinate to the objectives of protecting, conserving, and preserving resources of the System unit and of providing necessary and appropriate facilities to the public at reasonable rates.

(B) **SECONDARY FACTORS.**—The Secretary may also consider such secondary factors as the Secretary considers appropriate.

(C) **DEVELOPMENT OF REGULATIONS.**—In developing regulations to implement this subchapter, the Secretary shall consider the extent to which plans for employment of Indians (including Native Alaskans) and involvement of businesses owned by Indians, Indian tribes, or Native Alaskans in the operation of a concession contract should be identified as a factor in the selection of a best proposal under this section.

(6) **CONGRESSIONAL NOTIFICATION.**—

(A) **IN GENERAL.**—The Secretary shall submit any proposed concession contract with anticipated annual gross receipts in excess of \$5,000,000 or a duration of more than 10 years to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(B) **WAITING PERIOD.**—The Secretary shall not award any proposed concession contract to which subparagraph (A) applies until at least 60 days subsequent to the notification of both Committees.

(7) **PREFERENTIAL RIGHT OF RENEWAL.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the Secretary shall not grant a concessioner a preferential right to renew a concession contract, or any other form of preference to a concession contract.

(B) **EXCEPTION.**—The Secretary shall grant a preferential right of renewal to an existing concessioner with respect to proposed renewals of the categories of concession contracts described by paragraph (8), subject to the requirements of that paragraph.

(C) **ENTITLEMENT TO AWARD OF NEW CONTRACT.**—A concessioner that successfully exercises a preferential right of renewal in accordance with the requirements of this subchapter shall be entitled to award of the proposed new concession contract to which the preference applies.

(8) **OUTFITTER AND GUIDE SERVICES AND SMALL CONTRACTS.**—

(A) **APPLICATION.**—Paragraph (7) shall apply only to the following:

(i) Subject to subparagraph (B), concession contracts that solely authorize the provision of specialized backcountry outdoor recreation guide services that require the employment of specially trained and experienced guides to accompany System unit visitors in the backcountry so as to provide a safe and enjoyable experience for visitors who otherwise may not have the skills and equipment to engage in that activity.

(ii) Subject to subparagraph (C), concession contracts with anticipated annual gross receipts under \$500,000.

(B) **OUTFITTING AND GUIDE CONCESSIONERS.**—

(i) **DESCRIPTION.**—Outfitting and guide concessioners, where otherwise qualified, include concessioners that provide guided river running, hunting, fishing, horseback, camping, and mountaineering experiences.

(ii) **WHEN ENTITLED TO PREFERENTIAL RIGHT.**—An outfitting and guide concessioner is entitled to a preferential right of renewal under this subchapter only if—

(I) the contract with the outfitting and guide concessioner does not grant the concessioner any interest, including any leasehold surrender interest or possessory interest, in capital improvements on land owned by the United States within a System unit, other than a capital improvement constructed by a concessioner pursuant to the terms of a concession contract prior to November 13, 1998, or constructed or owned by a concessioner or the concessioner's predecessor before the subject land was incorporated into the System;

(II) the Secretary determines that the concessioner has operated satisfactorily during the term of the contract (including any extension); and

(III) the concessioner has submitted a responsive proposal for a proposed new concession contract that satisfies the minimum requirements established by the Secretary pursuant to paragraph (4).

(C) **CONTRACT WITH ESTIMATED GROSS RECEIPTS OF LESS THAN \$500,000.**—A concessioner that holds a concession contract that the Secretary estimates will result in gross annual receipts of less than \$500,000 if renewed shall be entitled to a preferential right of renewal under this subchapter if—

(i) the Secretary has determined that the concessioner has operated satisfactorily during the term of the contract (including any extension); and

(ii) the concessioner has submitted a responsive proposal for a proposed new concession contract that satisfies the minimum requirements established by the Secretary pursuant to paragraph (4).

(9) **NEW OR ADDITIONAL SERVICES.**—The Secretary may propose to amend the applicable

terms of an existing concessions contract to provide new and additional services where the Secretary determines the services are necessary and appropriate for public use and enjoyment of the unit of the National Park System in which they are located and are consistent to the highest practicable degree with the preservation and conservation of the resources and values of the unit. Such new and additional services shall not represent a material change to the required and authorized services as set forth in the applicable prospectus or contract.

(10) **AUTHORITY OF SECRETARY NOT LIMITED.**—Nothing in this subchapter shall be construed as limiting the authority of the Secretary to determine whether to issue a concession contract or to establish its terms and conditions in furtherance of the policies expressed in this subchapter.

(11) **EXCEPTIONS.**—Notwithstanding this section, the Secretary may award, without public solicitation, the following:

(A) **TEMPORARY CONTRACT.**—To avoid interruption of services to the public at a System unit, the Secretary may award a temporary concession contract or an extension of an existing concessions contract for a term not to exceed 3 years, except that prior to making the award, the Secretary shall take all reasonable and appropriate steps to consider alternatives to avoid the interruption.

(B) **CONTRACT IN EXTRAORDINARY CIRCUMSTANCES.**—The Secretary may award a concession contract in extraordinary circumstances where compelling and equitable considerations require the award of a concession contract to a particular party in the public interest. Award of a concession contract under this subparagraph shall not be made by the Secretary until at least 30 days after—

(i) publication in the Federal Register of notice of the Secretary’s intention to award the contract and the reasons for the action; and

(ii) submission of notice to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives.

(Pub. L. 113–287, §3, Dec. 19, 2014, 128 Stat. 3138; Pub. L. 114–289, title V, §502, Dec. 16, 2016, 130 Stat. 1490.)

HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|-------------------------------|---|
| 101913 | 16 U.S.C. 5952 (less (7)(C)). | Pub. L. 105–391, title IV, §403 (less (7)(C)), Nov. 13, 1998, 112 Stat. 3504. |

In paragraph (1), the words “entities seeking award of a concession contract” are substituted for “concessions contracts” for clarity.

In paragraph (2)(B)(i), the words “by electronic means” are substituted for “the Commerce Business Daily” to eliminate obsolete words. Federal Business Opportunities is the designated single point of universal electronic public access for publication of all procurement information and notices previously published in the Commerce Business Daily. See 66 Fed.

Reg. 27407, May 16, 2001, 68 Fed. Reg. 56678, October 1, 2003, 48 CFR ch. 1, subch. B, part 5, and the special notice posted in CBDNet on December 28, 2001, and printed on January 2, 2002.

In paragraph (5)(C), the words “concession contract” are substituted for “concession, contracts” to correct an error in the source provision.

In paragraph (8)(B)(ii)(III), the word “concession” is added for consistency in this subchapter.

Editorial Notes

AMENDMENTS

2016—Par. (9). Pub. L. 114–289 amended par. (9) generally. Prior to amendment, text read as follows: “The Secretary shall not grant a preferential right to a concessioner to provide new or additional services in a System unit.”

§ 101914. Term of concession contracts

A concession contract entered into pursuant to this subchapter shall generally be awarded for a term of 10 years or less. The Secretary may award a contract for a term of up to 20 years if the Secretary determines that the contract terms and conditions, including the required construction of capital improvements, warrant a longer term.

(Pub. L. 113–287, §3, Dec. 19, 2014, 128 Stat. 3142.)

HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|---------------------------|--|
| 101914 | 16 U.S.C. 5953. | Pub. L. 105–391, title IV, §404, Nov. 13, 1998, 112 Stat. 3508; Pub. L. 106–176, title III, §311, Mar. 10, 2000, 114 Stat. 34. |

§ 101915. Protection of concessioner investment

(a) **DEFINITIONS.**—In this section:

(1) **CAPITAL IMPROVEMENT.**—The term “capital improvement” means a structure, a fixture, or nonremovable equipment provided by a concessioner pursuant to the terms of a concession contract and located on land of the United States within a System unit.

(2) **CONSUMER PRICE INDEX.**—The term “Consumer Price Index” means—

(A) the “Consumer Price Index—All Urban Consumers” published by the Bureau of Labor Statistics of the Department of Labor; or

(B) if the Index is not published, another regularly published cost-of-living index approximating the Consumer Price Index.

(b) **LEASEHOLD SURRENDER INTEREST IN CAPITAL IMPROVEMENTS.**—A concessioner that constructs a capital improvement on land owned by the United States within a System unit pursuant to a concession contract shall have a leasehold surrender interest in the capital improvement subject to the following terms and conditions:

(1) **IN GENERAL.**—A concessioner shall have a leasehold surrender interest in each capital improvement constructed by a concessioner under a concession contract, consisting solely of a right to compensation for the capital improvement to the extent of the value of the concessioner’s leasehold surrender interest in the capital improvement.