



United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, N.W.
Washington, D.C. 20240

(2410)

AUG 2 2012

Memorandum

To: Deputy Director, Operations
Associate Director, Business Services
Regional Directors
Chief, Commercial Services Program

From: Director

Subject: Delegations of Authority and Related Program Accountability Standards for the Commercial Services Program

This memorandum consolidates existing memoranda primarily related to the development and approval of prospectuses for concession contracts and asset management issues related to that process. It includes matters covered in the superseded memoranda listed below.

A. PRIOR COMMERCIAL SERVICES DELEGATION AUTHORITIES

This memorandum supersedes the following policy memoranda:

- December 27, 2007, "Concession Policy Memo 2007-01: Estimating, Negotiating and Arbitrating Possessory Interest Value"
- March 13, 2007, "Revised Delegation of Approval Authority for Concessioner Constructed Capital Improvements"
- August 29, 2003, "Approved Deviations from Standard Contract Language and Delegations of Authority"
- February 25, 2002, "Category III Contracts"
- December 14, 2001, "Addendum to Revised Delegations of Concession Contract Authority"
- August 21, 2001, "Delegation of Authority Addendum"
- May 9, 2001, "Revised Delegations of Concession Contracting Authority," (supersedes Special Directive 95-9, dated July 11, 1995)
- May 9, 2001, "Delegation of Approval Authority, Concession Contracting"
- November 1, 1999, "Extension of Concession Contracts and Permits Expiring on December 31, 1999, and Establishment of National Concession Contracting Priorities"
- February 9, 1999, "Delegation of Approval Authority, Concession Contract and Permits"
- December 4, 1998, "Directive for Implementation of Concession Contracting and Related Sections of the National Parks Omnibus Management Act of 1998"

B. REGULATORY LIMITATIONS ON DELEGATION

The attached chart summarizes the delegations set forth in this Part B.

The Program regulations at 36 CFR Part 51 place specific limitations on delegation authority for the actions listed below.

1. Award of Contracts of Over \$5 Million per Year or 10 Years in Duration. 36 CFR § 51.22 provides that only the Director may approve the award of concession contracts with anticipated annual gross receipts in excess of \$5 million or with terms of more than 10 years in duration and may not delegate this approval authority except to a Deputy Director or an Associate Director.
2. Non-Competitive Award of a Temporary Contract to Avoid Interruption of Visitor Services. 36 CFR § 51.24(b) provides that the Director must personally approve the non-competitive award of a temporary contract to replace a contract in effect as of November 13, 1998, and had been extended as of that date or was due to expire by December 31, 1998.
3. Non-Competitive Award of a Contract to a Particular Person under Extraordinary Circumstances ("Sole Source" Contracts). 36 CFR § 51.25 restricts the non-competitive award of a concession contract to the Director upon a determination that extraordinary circumstances exist under which compelling and equitable considerations require the award of the contract to a particular qualified person in the public interest. The prior written approval of the Secretary is required for this action.
4. Determination of Outfitter and Guide Contract. 36 CFR § 51.43 provides that only a Deputy Director or an Associate Director may determine whether a concession contract is or is not an outfitter and guide contract.
5. Appeal Regarding Whether a Concessioner is a Preferred Offeror for Right of Preference in Renewal. Under 36 CFR § 51.47, only the Director, Deputy Director, or Associate Director may consider an appeal as to whether a concessioner is or is not a preferred offeror for the right of preference to a new concession contract including whether a new concession contract is or is not a qualified concession contract.
6. Appeal to Director. The definition of "Director" in 36 CFR § 51.3 provides, in circumstances where the regulations call for an appeal to the Director, an official of higher authority than the official that made the disputed decision must consider the appeal.

C. POLICY DELEGATIONS OF AUTHORITY FOR CONCESSION CONTRACT ACTIONS

The attached chart summarizes the delegations set forth in this Part C.

Notwithstanding any delegations herein, on issues of particular sensitivity, park management, regional staff, and the WASO Commercial Services Program Office, should undertake timely and meaningful consultation before committing to a specific course of action.

1. Prospectuses¹

- a) Prospectuses for Contracts of \$5 Million or More per Year OR More than 10 Years in Duration. Only the Director, Deputy Director, Operations, or Associate Director, Business Services, may

¹ See also Section D.3.a) below with respect to possessory interest value or leasehold surrender interest value estimates to be included in a prospectus.

approve prospectuses for concession contracts with anticipated annual gross receipts of \$5 million or more in the first year of stabilized operations or with terms of more than 10 years.

- b) Prospectuses for Contracts of Less Than \$5 Million per Year AND 10 Years or Less in Duration. A Regional Director must approve prospectuses for concession contracts in any category with anticipated annual gross receipts of less than \$5 million in the first year of stabilized operations and terms of 10 years or less, with no further delegation authorized. NOTE: A Regional Director must receive written approval from the WASO Commercial Services Program Chief if the region determines a term of *less than 10 years* is appropriate for a concession contract.
- c) Extension, Amendment, or Cancellation of a Prospectus. The authority to extend a prospectus is with the Regional Directors with prompt notification to the WASO Commercial Services Program Chief. The authority to amend or cancel a prospectus is the same as the approval authority set out above.

2. Deviations from Standard Contract Language

Only the Director, Deputy Director, Operations, or Associate Director, Business Services, may approve any deviation from approved standard contract language. This requirement applies to the draft contract in prospectuses and all amendments subsequent to the award of a contract.

3. Selection, Award, Amendment and Termination of Contracts

- a) Amendment or Termination of 1965 Act Contracts. Only the Director, Deputy Director, Operations, or Associate Director, Business Services, may approve the amendment or termination of contracts and permits issued under the 1965 Act.
- b) 1998 Act Contracts of \$5 Million or More per Year OR More than 10 Years in Duration. Only the Director, Deputy Director, Operations, or Associate Director, Business Services, may approve the selection of the offeror, award, or termination of contracts with anticipated annual gross receipts of \$5 million or more in the first year of stabilized operations, or with terms of more than 10 years, regardless of category. After award, Regional Directors may approve an amendment of these contracts EXCEPT for amendments to change standard contract language, to convert a contract from one category to another, to change franchise fees, and all amendments proposed AFTER the original contract term has expired and the contract is under an extension.
- c) 1998 Act Contracts of Less Than \$5 Million per Year AND 10 Years or Less in Duration. Regional Directors may approve the selection of the offeror, award, amendment (other than extensions) or termination of contracts with annual gross receipts of less than \$5 million in the first year of stabilized operations AND with terms of 10 years or less, with no further delegation authorized. Notwithstanding the foregoing, only the Director, Deputy Director, Operations, or Associate Director, Business Services, may approve amendments to change standard contract language, to convert a contract from one category to another, to change franchise fees, and all amendments proposed AFTER the original contract term has expired and the contract is under an extension.
- d) Temporary Contracts. Except for a temporary contract to replace a contract in effect as of November 13, 1998, that had been extended as of that date or was due to expire by December 31, 1998, which only the Director may approve, the Director, Deputy Director, Operations, and Associate Director, Business Services may approve the award of a non-competitive temporary

concession contract. Once awarded, future contract actions are delegated as set out in paragraphs C.3.b) or C.3.c) above.

- e) Non-Competitive ("Sole-Source") Contracts. Only the Director, with the prior written approval of the Secretary, may approve the award of a non-competitive "sole source" concession contract pursuant to 36 CFR § 51.25.

4. Extensions or Continuations

- a) Extensions for All Categories of Contracts. Only the Director, Deputy Director, Operations, or Associate Director, Business Services, may approve extensions for all categories of contracts.
- b) Continuation of Services Pursuant to Contracts Issued Under the Authority of the 1965 Act. For those contracts issued under the 1965 Act and already extended to the maximum allowable under 36 CFR §51.23, only the Director, Deputy Director, Operations, or Associate Director, Business Services, may approve continuations of visitor services under the terms and conditions of the contract.

5. Debriefings

Policy Memorandum 2010-01, dated March 23, 2010, established the process for debriefing offerors following the NPS evaluation of an offeror's proposal for a new concession contract. Regional Chiefs of Commercial Services have the primary responsibility to respond to debriefing requests.

6. Assignments and Encumbrances

- a) Assignments:

Contracts of \$5 Million or More per Year OR More than 10 Years in Duration. Only the Director, Deputy Director, Operations, or Associate Director, Business Services, may approve the assignment (i.e., transfer) of any contract (or of certain rights or ownership interests thereunder, as listed below) with gross receipts of \$5 million or more or a term of more than 10 years:

- Any right to operate under or manage the performance of a concession contract as a sub-concessioner or otherwise.
- Any controlling interest in a concessioner (e.g., the sale by the holder of 51 percent of the stock of a corporate concessioner). Any question concerning what may constitute a controlling interest, especially with respect to a partnership or limited liability company, should be referred to the Office of the Solicitor.

Contracts of Less Than \$5 Million per Year AND 10 Years or Less in Duration. A Regional Director may approve the assignment (i.e., transfer) of contracts (or of certain rights or ownership interests thereunder, as listed below) with gross receipts of less than \$5 million and terms of 10 years or less with no further delegation authorized:

- Any right to operate under or manage the performance of a concession contract as a sub-concessioner or otherwise.
- Any controlling interest in a concessioner (e.g., the sale by the holder of 51 percent of the stock of a corporate concessioner). Any question concerning what may constitute a

controlling interest, especially with respect to a partnership or limited liability company, should be referred to the Office of the Solicitor.

- b) Encumbrances: Only the Director, Deputy Director, Operations, or Associate Director, Business Services, may approve an encumbrance (i.e., a pledge to secure a loan) of a concession contract, leasehold surrender interest, possessory interest, or any rights under the contract.

7. Franchise Fees

- a) Franchise Fee Modifications. Only the Director, Deputy Director, Operations, or Associate Director, Business Services, may approve the modification of a franchise fee.
- b) Waivers of Franchise Fees. The Director may not waive payment of a concessioner's franchise fee or other payments or consideration required by a concession contract, except that the Director may waive a franchise fee in part pursuant to administrative guidelines that may allow for a partial waiver in recognition of exceptional performance under the terms of a concession contract. (36 CFR §51.79) As of the date of this memorandum, however, no such administrative guidelines exist to authorize partial waivers.
- c) Franchise Fees of One Percent (1%) or Less. For all prospectuses that propose a minimum franchise fee of 1% or less, a Regional Director must obtain the concurrence of the WASO Commercial Services Program Chief that such a fee is appropriate.

8. Preferred Offeror Determinations or Appeals

- a) Determinations. If a new contract has projected annual gross receipts of less than \$500,000 in the first year of stabilized operations, a Regional Director may determine whether a concessioner is a preferred offeror, with no further delegation authorized (see Part B.4. above, however, regarding the determination whether a contract is or is not an outfitter and guide contract).
- b) Appeal Regarding Whether a Concessioner is a Preferred Offeror for Right of Preference in Renewal. Only the Director, Deputy Director, Operations, or Associate Director, Business Services, may consider an appeal by any person that a concessioner is or is not a preferred offeror for the right of preference in renewal, including, without limitation, whether a new concession contract is or is not a qualified concession contract.
- c) Appeal by a Concessioner under 1965 Act Contract for Recognition of Renewal Preference. Only the Director, Deputy Director, Operations, or Associate Director, Business Services, may consider the appeal of a concessioner who holds an existing 1965 Act concession contract that makes express reference to a renewal preference for recognition of a renewal preference.

9. Convening Evaluation Panels

- a) Contracts of \$5 Million or More per Year OR More than 10 Years in Duration. Regional Directors convene panels to evaluate prospectus proposals for concession contracts with anticipated annual gross receipts of \$5 million or more in the first year of stabilized operations, or with terms of more than 10 years, with no further delegation authorized. A Regional Director, however, must submit a list of prospective panel members, including the proposed panel chairperson in a timely manner to the WASO Commercial Services Program Chief for review and approval prior to the prospectus closing date. Consultation may occur to determine the skills and expertise necessary for panel members and to ensure a fair and objective panel review.

- b) Contracts of Less Than \$5 Million per Year AND 10 Years or Less in Duration. Regional Directors convene panels to evaluate prospectus proposals for concession contracts with anticipated annual gross receipts of less than \$5 million in the first year of stabilized operations, and with terms of 10 years or less, with no further delegation authorized.

10. Converting a Concession Contract or a Commercial Use Authorization (CUA) to a Lease

On May 29, 2007, the "Authorizing Activities through Leases Versus Concession Contracts or Commercial Use Authorizations" memorandum established the procedures for converting a concession contract or a CUA to a lease.

D. POLICY DELEGATIONS OF AUTHORITY FOR ASSET MANAGEMENT AND VALUE DETERMINATIONS

The attached chart summarizes the delegations set forth in this Part D.

Notwithstanding any delegations herein, on issues of particular sensitivity, park management, regional staff, and the WASO Commercial Services Program Office should undertake timely and meaningful consultation before committing to a specific course of action.

1. Approval of Prospectus Related Condition Assessment Waivers

The Associate Director, Business Services, may approve prospectus related condition assessment waivers.

2. Concessioner Funded Capital Improvement Projects

- a) Approval of Projects by the Development Advisory Board (DAB). Prior to submitting any project to the Director or Regional Director for approval, a project must have completed all required processes and received approval by the DAB.
- b) New Structures and Additions to Structures. Only the Director may approve concessioner funded construction of new structures and additions to structures, regardless of cost.
- c) Major Rehabilitations. Only the Director may approve concessioner funded major rehabilitations of \$1 million or more. A Regional Director may approve concessioner funded major rehabilitations of less than \$1 million, with no further delegation authorized.
- d) Cost Variances of 10 Percent or Greater. Only the Director may approve cost variances of 10 percent or greater of the total approved cost for construction of a new structure or addition or major rehabilitation of an existing structure costing \$1 million or more, and cost variances that move a major rehabilitation from less than \$1 million to greater than \$1 million. A Regional Director may approve cost variances of 10 percent or greater for major rehabilitations costing less than \$1 million, with no further delegation authorized.
- e) Replacement of Fixtures. Park superintendents may approve fixture replacements, regardless of cost, prior to replacement of the fixture. The Superintendent must forward to WASO (through the Regional Director) the Annual Fixture Replacement Report and Certified Public Accountant certification submitted by the concessioner.

3. Possessory Interest (PI) Value or Leasehold Surrender Interest (LSI) Value

- a) Prospectus Estimates. Regional Directors may approve all estimates of PI or LSI value of less than \$1 million to be included in a prospectus for a new concession contract, with no further delegation authorized. Regional Directors must obtain the concurrence of the Director, Deputy Director, Operations, or Associate Director, Business Services, for PI or LSI values of \$1 million or more to be included in a prospectus for a new concession contract.
- b) Negotiations of Possessory Interest or Leasehold Surrender Interest Values
 - 1) Agreement to Negotiate. Regional Directors may approve agreements to negotiate PI or LSI values estimated to be less than \$1 million. Regional Directors must obtain the concurrence of the Director, Deputy Director, Operations, or Associate Director, Business Services, with agreements to negotiate estimated PI or LSI values of \$1 million or more.
 - 2) Initial NPS Value Position. Regional Directors, with concurrence of the WASO Commercial Services Program Chief, may approve all initial NPS PI or LSI value negotiating positions less than \$1 million. Regional Directors must obtain the concurrence of the Director, Deputy Director, Operations, or Associate Director, Business Services, for all initial NPS PI or LSI value negotiating positions of \$1 million or more.
 - 3) Negotiating Team. Regional Directors may designate the negotiating team for concession contracts with an estimated PI or LSI values of less than \$1 million. Regional Directors must obtain the concurrence of the Director, Deputy Director, Operations, or Associate Director, Business Services, for all negotiating teams for concession contracts with an estimated PI or LSI value of \$1 million or more.
 - 4) Proposed Value Agreement. Regional Directors, with concurrence of the WASO Commercial Services Program Chief, may approve any proposed PI value or LSI value between the NPS and a concessioner for values less than \$1 million. Regional Directors must obtain the approval of the Director, Deputy Director, Operations, or Associate Director, Business Services, of any proposed PI or LSI value agreement between the NPS and a concessioner with an estimated value of \$1 million or more.
- c) Arbitration
 - 1) Arbitration Procedures Agreements. Regional Directors, with concurrence of the WASO Commercial Services Program Chief and Office of the Solicitor, must approve all arbitration procedure agreements for arbitration of PI or LSI value, subject to the final approval of the Director, Deputy Director, Operations, or Associate Director, Business Services.
 - 2) Initial NPS Value Position. Prior to its submission in the arbitration process, Regional Directors, with concurrence of the WASO Commercial Services Program Chief and the final approval of the Director, Deputy Director, Operations, or Associate Director, Business Services, must approve initial NPS value positions.

E. PROGRAM ACCOUNTABILITY STANDARDS

The official responsible for approval or award of a concession contract or related document must assure that all applicable legal, regulatory, policy and procedural requirements of the concessions program have been met.

1. Substantial Compliance with Servicewide Concession Contracting Procedures. All legal and regulatory requirements must be met. All contract actions must substantially comply with established Servicewide concession contracting procedures and standard contract language. Only the Director, Deputy Director, Operations, or Associate Director, Business Services, may approve policy deviations. For approval of waivers of policy requirements contained in NPS Management Policies 2006, only the Secretary, Assistant Secretary for Fish and Wildlife and Parks, or Director may waive those requirements.
2. Legal Review. The responsible attorney from the Office of the Solicitor must review and determine the legal sufficiency of documentation of contracting actions. Such documentation includes final contracts before execution by the selected offeror, contract amendments, notices of termination, and all relevant instruments relating to sales, assignments, and encumbrances. Typically the attorney will review draft prospectuses prior to the roundtable (a meeting of NPS stakeholders to review an¹ comment on the draft and resolve any outstanding issues) and prior to issuance. If a roundtable does not occur, the review would occur only before issuance. For WASO-level contracts, the regional or field attorney must review and determine the legal sufficiency of the documents before the Regional Chief of Commercial Services submits them to WASO for review and approval.
3. Delegation for Management of Regional Concession Contracting Programs. Each Regional Director must designate, by formal delegation, the Regional Chief of Commercial Services within his or her respective Regional Directorate to manage the regional concession program. This official must approve each contracting action.
4. Prospectus Planning. This planning will include the careful review of park management planning documents and current and planned commercial services early in the prospectus development process, in addition to consideration of approved park-wide projects and proposed implementation schedules.
5. Financial Analysis. The NPS may contract with a private entity to prepare the financial aspects of a prospectus (P.L. 105-391, Sec.410). As part of the due diligence for prospectus development for all concession contracts not delegated to a Regional Director under Part C.1 .b) above, a financial analysis must be completed by a WASO-approved contractor. Any request for waiver of this requirement must be approved by the Associate Director, Business Services.
6. Personal Property Valuations. Regional Directors must obtain the services of a private contractor to estimate the value of personal property for all prospectus development projects for operations with a significant amount of personal property or those with unique personal property assets. Regional Chiefs of Commercial Services must consult with the WASO Commercial Services Program Chief to discuss the need to obtain such services.
7. Insurance Requirements. As part of the due diligence for prospectus development, all contracts must specify the appropriate types of insurance and levels of coverage. As part of the process for developing prospectuses, Regional Chiefs of Commercial Services must submit a request for the WASO-approved insurance consultant. If a Regional Director decides to include requirements other than those recommended by this consultant, he or she must approve a written justification for such

change. For contracts not delegated to regions, the Director, Deputy Director, Operations, or Associate Director, Business Services must concur with the change.

8. **Evaluation Panels.** All panel members (i.e., voting members) must be Federal employees and may be employees of other Federal agencies. Staff, park superintendents, or other decision-makers from the affected park, and park superintendents from parks with concession operators who submitted a proposal, may not serve as voting members on panels. Affected park superintendents and staff and Department of the Interior solicitors may serve as technical advisors to the panel. In addition, and when appropriate, consultants from the private sector and disciplines other than commercial services also may provide technical assistance to the panel.
9. **Sale or Rental of Appropriate Equipment under a Qualified Outfitter and Guide Concession Contract.** Prospectuses and draft contracts describing services in Category III contracts for outfitter and guide services no longer need to include as a required or authorized service the sale or rental of appropriate equipment and clothing associated with an authorized activity. When the sale or rental of appropriate equipment and clothing associated with an outfitter and guide activity is an integral component for conducting the outfitter and guide activities, the inclusion of such services generally will not affect the determination that a concessioner is or is not a preferred offeror.

F. EXISTING ASSET MANAGEMENT AUTHORITY

This memorandum does not affect the following memoranda, which pertain to asset management and contain delegations of authority that may affect prospectus development. Please refer to these memoranda for additional information at the Commercial Services SharePoint site, within the Program Policy Library: <http://share.nps.gov/commercialservices>.

- June 16, 2009, "Establishment of Leasehold Surrender Interest Fixture Replacement Crediting Policy"
- May 18, 2009, "Establishment of Concessions Prospectus Development Condition Assessment Policy"
- May 15, 2009, "Managing Possessory Interest, Leasehold Surrender Interest, and Personal Property Acquisitions"
- January 5, 2009, "Establishment of Leasehold Surrender Interest Crediting Policy"
- August 7, 2007, "Possessory Interest in National Park Service Concession Contracting"
- January 15, 2003, "Possessory Interest Appraisals: Clarification"

G. ADMINISTRATIVE MATTERS

Prior to issuing a prospectus for a new contract, Regional Offices must send electronic copies of all prospectuses to the WASO Commercial Services office for posting on the program's external web site. In addition, Regional Offices must forward for posting all modifications, errata, and other documents provided to prospective offerors throughout the period the prospectus is open for proposals. Regional offices must provide the WASO Commercial Services offices in D.C. and Denver a copy of all published prospectuses.

Finally, Regional Offices must provide electronic copies to WASO of all awarded contracts within 30 calendar days following the award of the contracts. Regional Offices also must forward copies to WASO of all amendments to contracts, including any of the exhibits other than operating and maintenance plans, within 30 calendar days following the signing of such documents.

For further information, please contact Chief, Commercial Services Program, at 202/513-7156.

Attachment – Policy Delegations of Authority Chart

REGULATORY LIMITATIONS ON DELEGATION

Action Involved	Secy	Dir	DD	AD, Bus Svcs	RD	Program Chief
Award of Contracts of Over \$5 Million per Year or 10 Years in Duration. 36 C.F.R. § 51.22 provides that only the Director may approve the award of concession contracts with anticipated annual gross receipts in excess of \$5 million or with terms of more than 10 years in duration and may not delegate this approval authority except to a Deputy Director or an Associate Director.	X	X	X	X		
Non-Competitive Award of a Temporary Contract to Avoid Interruption of Visitor Services. 36 C.F.R. § 51.24(b) provides that the Director must personally approve the non-competitive award of a temporary contract to replace a contract in effect as of November 13, 1998, and had been extended as of that date or was due to expire by December 31, 1998.	X	X				
Non-Competitive Award of a Contract to a Particular Person under Extraordinary Circumstances ("Sole Source" Contracts). 36 C.F.R. § 51.25 restricts the non-competitive award of a concession contract to the Director upon a determination that extraordinary circumstances exist under which compelling and equitable considerations require the award of the contract to a particular qualified person in the public interest. The prior written approval of the Secretary is required for this action.	X	X				
Determination of Outfitter and Guide Contract. 36 C.F.R. § 51.43 provides that only a Deputy Director or an Associate Director may determine whether a concession contract is or is not an outfitter and guide contract.	X	X	X	X		
Appeal Regarding Whether a Concessioner is a Preferred Offeror for the Right of Preference in Renewal. Under 36 C.F.R. § 51.47, only the Director, Deputy Director, or Associate Director may consider an appeal as to whether a concessioner is or is not a preferred offeror for the right of preference to a new concession contract including whether a new concession contract is or is not a qualified concession contract.	X	X	X	X		
Appeal to Director. The definition of "Director" in 36 C.F.R. § 51.3 provides in circumstances where the regulations call for an appeal to the Director, an official of higher authority than the official that made the disputed decision must consider the appeal.						

POLICY DELEGATIONS OF AUTHORITY FOR CONCESSION CONTRACT ACTIONS

Notwithstanding any delegations herein, on issues of particular sensitivity, park management, regional staff, and the WASO Commercial Services Program Office should undertake timely and meaningful consultation before committing to a specific course of action.

Prospectuses

Action Involved	Secy	Dir	DD	AD, Bus Svcs	RD	Program Chief
Prospectuses for Contracts of \$5 Million or More per Year OR More than 10 Years in Duration. Only the Director, Deputy Director, Operations, or Associate Director, Business Services, may approve prospectuses for concession contracts with anticipated annual gross receipts of \$5 million or more in the first year of stabilized operations or with terms of more than 10 years.	X	X	X	X		
Prospectuses for Contracts of Less Than \$5 Million per Year AND 10 Years or Less in Duration. A Regional Director must approve prospectuses for concession contracts in any category with anticipated annual gross receipts of less than \$5 million in the first year of stabilized operations and terms of 10 years or less, with no further delegation authorized. NOTE: A Regional Director must receive written approval from the WASO Commercial Services Program Chief if the Region determines a term of less than ten years is appropriate for a concession contract.	X	X	X	X	X	

NPS Commercial Services Program
Delegations of Authority Chart

Action Involved	Secy	Dir	DD	AD, Bus Svcs	RD	Program Chief
Extension, Amendment, or Cancellation of a Prospectus. The authority to extend a prospectus is with the Regional Directors with prompt notification to the WASO Commercial Services Program Chief. The authority to amend or cancel a prospectus is the same as the approval authority set out above.	X	X	X	X	X	

Deviations from Standard Contract Language

Action Involved	Secy	Dir	DD	AD, Bus Svcs	RD	Program Chief
Only the Director, Deputy Director, Operations, or Associate Director, Business Services, may approve any deviation from approved standard contract language. This requirement applies to the draft contract in prospectuses and all amendments subsequent to the award of a contract.	X	X	X	X		

Selection, Award, Amendment and Termination of Contracts

Action Involved	Secy	Dir	DD	AD, Bus Svcs	RD	Program Chief
Amendment or Termination of 1965 Act Contracts. Only the Director, Deputy Director, Operations, or Associate Director, Business Services, may approve the amendment or termination of contracts and permits issued under the 1965 Act.	X	X	X	X		
1998 Act Contracts of \$5 Million or More per Year OR More than 10 Years in Duration. Only the Director, Deputy Director, Operations, or Associate Director, Business Services, may approve the selection of the offeror, award, or termination of contracts with anticipated annual gross receipts of \$5 million or more in the first year of stabilized operations, or with terms of more than 10 years, regardless of category. After award, Regional Directors may approve an amendment of these contracts EXCEPT for amendments to change standard contract language, to convert a contract from one category to another, to change franchise fees, and all amendments proposed AFTER the original contract term has expired and the contract is under an extension.	X	X	X	X		
1998 Act Contracts of Less Than \$5 Million per Year AND 10 Years or Less in Duration. Regional Directors may approve the selection of the offeror, award, amendment (other than extensions) or termination of contracts with annual gross receipts of less than \$5 million in the first year of stabilized operations AND with terms of 10 years or less, with no further delegation authorized. Notwithstanding the foregoing, only the Director, Deputy Director, Operations, or Associate Director, Business Services, may approve amendments to change standard contract language, to convert a contract from one category to another, to change franchise fees, and all amendments proposed AFTER the original contract term has expired and the contract is under an extension.	X	X	X	X	X	
Temporary Contracts. Except for a temporary contract to replace a contract in effect as of November 13, 1998, that had been extended as of that date or was due to expire by December 31, 1998, which only the Director may approve, the Director, Deputy Director, Operations, and Associate Director, Business Services may approve the award of a non-competitive temporary concession contract. Once awarded, future contract actions are delegated as set out in the appropriate one of the two boxes above.	X	X	X	X		
Non-Competitive ("Sole-Source") Contracts. Only the Director, with the prior written approval of the Secretary, may approve the award of a non-competitive "sole source" concession contract pursuant to 36 C.F.R. § 51.25.	X	X				

NPS Commercial Services Program
Delegations of Authority Chart

Extensions or Continuations

Action Involved	Secy	Dir	DD	AD, Bus Svcs	RD	Program Chief
Extensions for All Categories of Contracts. Only the Director, Deputy Director, Operations, or Associate Director, Business Services, may approve extensions for all categories of contracts.	X	X	X	X		
Continuation of Services Pursuant to Contracts Issued Under the Authority of the 1965 Act. For those contracts issued under the 1965 Act and already extended to the maximum allowable under 36 C.F.R. §51.23, only the Director, Deputy Director, Operations, or Associate Director, Business Services, may approve continuations of visitor services under the terms and conditions of the contract.	X	X	X	X		

Debriefings

Action Involved	Secy	Dir	DD	AD, Bus Svcs	RD	Program Chief
Policy Memorandum 2010-01, dated March 23, 2010, established the process for debriefing offerors following the NPS evaluation of an offeror's proposal for a new concession contract. Regional Chiefs of Commercial Services have the primary responsibility to respond to debriefing requests.						

Assignments and Encumbrances

Action Involved	Secy	Dir	DD	AD, Bus Svcs	RD	Program Chief
Contracts of \$5 Million or More per Year OR More than 10 Years in Duration. Only the Director, Deputy Director, Operations, or Associate Director, Business Services, may approve the assignment (i.e., transfer) of any contract (or of certain rights or ownership interests thereunder, as listed below) with gross receipts of \$5 million or more or a term of more than 10 years: <ul style="list-style-type: none"> · Any right to operate under or manage the performance of a concession contract as a sub-concessioner or otherwise. · Any controlling interest in a concessioner (e.g., the sale by the holder of 51 percent of the stock of a corporate concessioner). Any question concerning what may constitute a controlling interest, especially with respect to a partnership or limited liability company, should be referred to the Office of the Solicitor. 	X	X	X	X		
Contracts of Less Than \$5 Million per Year AND 10 Years or Less in Duration. A Regional Director may approve the assignment (i.e., transfer) of contracts (or of certain rights or ownership interests thereunder, as listed below) with gross receipts of less than \$5 million and terms of 10 years or less with no further delegation authorized: <ul style="list-style-type: none"> · Any right to operate under or manage the performance of a concession contract as a sub-concessioner or otherwise. · Any controlling interest in a concessioner (e.g., the sale by the holder of 51 percent of the stock of a corporate concessioner). Any question concerning what may constitute a controlling interest, especially with respect to a partnership or limited liability company, should be referred to the Office of the Solicitor. 	X	X	X	X	X	
Encumbrances: Only the Director, Deputy Director, Operations, or Associate Director, Business Services, may approve an encumbrance (i.e., a pledge to secure a loan) of a concession contract, leasehold surrender interest, possessory interest, or any rights under the contract.	X	X	X	X		

Franchise Fees

Action Involved	Secy	Dir	DD	AD, Bus Svcs	RD	Program Chief
Franchise Fee Modifications. Only the Director, Deputy Director, Operations, or Associate Director, Business Services, may approve the modification of a franchise fee.	X	X	X	X		
Waivers of Franchise Fees. The Director may not waive payment of a concessioner's franchise fee or other payments or consideration required by a concession contract, except that the Director may waive a franchise fee in part pursuant to administrative guidelines that may allow for a partial waiver in recognition of exceptional performance under the terms of a concession contract. (36 C.F.R. § 51.79) As of the date of this memorandum, however, no such administrative guidelines exist to authorize partial waivers.	X	X				
Franchise Fees of One Percent (1%) or Less. For all prospectuses that propose a minimum franchise fee of 1% or less, a Regional Director must obtain the concurrence of the WASO Commercial Services Program Chief that such a fee is appropriate.	X	X	X	X	X	X

Preferred Offeror Determinations or Appeals

Action Involved	Secy	Dir	DD	AD, Bus Svcs	RD	Program Chief
Determinations. If a new contract has projected annual gross receipts of less than \$500,000 in the first year of stabilized operations, a Regional Director may determine whether a concessioner is a preferred offeror, with no further delegation authorized (but only a Deputy Director an Associate Director may determine whether a concession contract is or is not an outfitter and guide contract per 36 C.F.R. § 51.43).	X	X	X	X	X	
Appeal Regarding Whether a Concessioner is a Preferred Offeror for Right of Preference in Renewal. Only the Director, Deputy Director, Operations, or Associate Director, Business Services, may consider an appeal by any person that a concessioner is or is not a preferred offeror for the right of preference in renewal, including, without limitation, whether a new concession contract is or is not a qualified concession contract.	X	X	X	X		
Appeal by a Concessioner under 1965 Act Contract for Recognition of Renewal Preference. Only the Director, Deputy Director, Operations, or Associate Director, Business Services, may consider the appeal of a concessioner who holds an existing 1965 Act concession contract that makes express reference to a renewal preference for recognition of a renewal preference.	X	X	X	X		

Convening Evaluation Panels

Action Involved	Secy	Dir	DD	AD, Bus Svcs	RD	Program Chief
Contracts of \$5 Million or More per Year OR More than 10 Years in Duration. Regional Directors convene panels to evaluate prospectus proposals for concession contracts with anticipated annual gross receipts of \$5 million or more in the first year of stabilized operations, or with terms of more than 10 years, with no further delegation authorized. A Regional Director, however, must submit a list of prospective panel members, including the proposed panel chairperson in a timely manner to the WASO Commercial Services Program Chief for review and approval prior to the prospectus closing date. Consultation may occur to determine the skills and expertise necessary for panel members and to ensure a fair and objective panel review.	X	X	X	X	X	X
Contracts of Less Than \$5 Million per Year AND 10 Years or Less in Duration. Regional Directors convene panels to evaluate prospectus proposals for concession contracts with anticipated annual gross receipts of less than \$5 million in the first year of stabilized operations, and with terms of 10 years or less, with no further delegation authorized.	X	X	X	X	X	

POLICY DELEGATIONS OF AUTHORITY FOR ASSET MANAGEMENT AND VALUATION DELEGATIONS

Action Involved	Secy	Dir	DD	AD, Bus Svcs	RD	Program Chief
Notwithstanding any delegations herein, on issues of particular sensitivity, park management, regional staff, and the WASO Commercial Services Program Office should undertake timely and meaningful consultation before committing to a specific course of action.						

Approval of Prospectus Related Condition Assessment Waivers

Action Involved	Secy	Dir	DD	AD, Bus Svcs	RD	Program Chief
The Associate Director, Business Services, may approve prospectus related condition assessment waivers.	X	X	X	X		

Concessioner Funded Capital Improvement Projects

Action Involved	Secy	Dir	DD	AD, Bus Svcs	RD	Program Chief
Approval of Projects by the Development Advisory Board (DAB). Prior to submitting any project to the Director or Regional Director for approval, a project must have completed all required processes and received approval by the DAB.						
New Structures and Additions to Structures. Only the Director may approve concessioner funded construction of new structures and additions to structures, regardless of cost.	X	X				
Major Rehabilitations. Only the Director may approve concessioner funded major rehabilitations of \$1 million or more. A Regional Director may approve concessioner funded major rehabilitations of less than \$1 million, with no further delegation authorized.	X	X				
Cost Variances of 10 Percent or Greater. Only the Director may approve cost variances of 10% or greater of the total approved cost for construction of a new structure or addition or major rehabilitation of an existing structure costing \$1 million or more, and cost variances that move a major rehabilitation from less than \$1 million to greater than \$1 million. A Regional Director may approve cost variances of 10% or greater for major rehabilitations costing less than \$1 million, with no further delegation authorized.	X	X				
Replacement of Fixtures. Park superintendents may approve fixture replacements, regardless of cost, prior to replacement of the fixture. The Superintendent must forward to WASO (through the Regional Director) the Annual Fixture Replacement Report and Certified Public Accountant certification submitted by the concessioner.	X	X	X	X	X	

Possessory Interest (PI) Value or Leasehold Surrender Interest (LSI) Value

Action Involved	Secy	Dir	DD	AD, Bus Svcs	RD	Program Chief
Prospectus Estimates. Regional Directors may approve all estimates of PI or LSI value of less than \$1 million to be included in a prospectus for a new concession contract, with no further delegation authorized. Regional Directors must obtain the concurrence of the Director, Deputy Director, Operations, or Associate Director, Business Services, for PI or LSI value of \$1 million or more to be included in a prospectus for a new concession contract.	X	X	X	X	X	

Negotiations of Possessory Interest or Leasehold Surrender Interest Values

Action Involved	Secy	Dir	DD	AD, Bus Svcs	RD	Program Chief
Agreement to Negotiate. Regional Directors may approve agreements to negotiate PI or LSI values estimated to be less than \$1 million. Regional Directors must obtain the concurrence of the Director, Deputy Director, Operations, or Associate Director, Business Services, with agreements to negotiate estimated PI or LSI values of \$1 million or more.	X	X	X	X	X	
Initial NPS Value Position. Regional Directors, with concurrence of the WASO Commercial Services Program Chief, may approve all initial NPS PI or LSI value negotiating positions less than \$1 million. Regional Directors must obtain the concurrence of the Director, Deputy Director, Operations, or Associate Director, Business Services, for all initial NPS PI or LSI value negotiating positions of \$1 million or more.	X	X	X	X	X	X
Negotiating Team. Regional Directors may designate the negotiating team for concession contracts with an estimated PI or LSI value of less than \$1 million. Regional Directors must obtain the concurrence of the Director, Deputy Director, Operations, or Associate Director, Business Services, for all negotiating teams for concession contracts with an estimated PI or LSI value of \$1 million or more.	X	X	X	X	X	
Proposed Value Agreement. Regional Directors, with concurrence of the WASO Commercial Services Program Chief, may approve any proposed PI value or LSI value between the NPS and a concessioner for values less than \$1 million. Regional Directors must obtain the approval of the Director, Deputy Director, Operations, or Associate Director, Business Services, of any proposed PI or LSI value agreement between the NPS and a concessioner with an estimated value of \$1 million or more.	X	X	X	X	X	X

Arbitration

Action Involved	Secy	Dir	DD	AD, Bus Svcs	RD	Program Chief
Arbitration Procedures Agreements. Regional Directors, with concurrence of the WASO Commercial Services Program Chief and Office of the Solicitor, must approve all arbitration procedure agreements for arbitration of PI or LSI value, subject to the final approval of the Director, Deputy Director, Operations, or Associate Director, Business Services.	X	X	X	X	X	X
Initial NPS Value Position. Prior to its submission in the arbitration process, Regional Directors, with concurrence of the WASO Commercial Services Program Chief, and the final approval of the Director, Deputy Director, Operations, or Associate Director, Business Services, must approve initial NPS value positions.	X	X	X	X	X	X