

# PART 3 – INSTRUCTIONS TO THE OFFEROR FOR PREPARING THE PROPOSAL

*Before completing a proposal, carefully read and consider these instructions, the concession contract document, the exhibits to the concession contract document, and the other information in this Prospectus, its appendix, and any other documents to which it refers.*

## A. RESPONSE PERIOD FOR SUBMISSION OF PROPOSALS

It is assumed that all interested parties submitting a proposal in response to this Prospectus are aware of the provisions of 43 CFR Subtitle A and B and the latest Reclamation Manual Policy and Directives and Standards, as amended.

Proposals must be received by 2 p.m. on the date shown on the front page of this Prospectus. Public notice has been given.

Only an Offeror submitting a responsive proposal is eligible to be awarded a new concession contract. A proposal is considered responsive if it is submitted on time and is determined by Reclamation or Reclamation’s delegate (for ALL matters relating to this Prospectus, that delegate is the Mid-Pacific Regional Director) to satisfy all the minimum requirements of the new concession contract and this Prospectus and to provide all the information required by this Prospectus. The minimum requirements for the new concession contract are identified in Part A of PART 5 of the Prospectus. Offerors must agree in their proposal to the minimum requirements of this Prospectus, as identified in Part A, and must provide all the information required by Part B of PART 5 for the proposal to be considered responsive.

Proposals determined to be non-responsive by Reclamation will be rejected and will not be further evaluated.

## B. SCHEDULE OF MEETINGS AND CONCESSION FACILITY TOURS

All interested parties may tour the concession locations and discuss the requirements of the Prospectus at the following scheduled meetings. To ensure fair competition, no other meetings will be held. All meetings will begin at the Reclamation Office at Lake Berryessa located at 5520 Knoxville Road, Napa, CA. 94558.

	Meeting Date		Time		Location
1.	June 3, 2009		10:00AM		Putah Creek, Rancho Monticello, Lake Berryessa Marina, Spanish Flat
2.	June 4, 2009		10:00AM		Steele Park, Markley Cove
3.	June 5, 2009		10:00AM		As Needed

There will also be a meeting without a tour that will occur on **June 29, 2009 beginning at 9AM at 5520 Knoxville Road, Napa CA. 94558** that all prospective Offerors are encouraged to attend. Note that this meeting is scheduled approximately six weeks after the issuance date of the Prospectus. Reclamation recognizes that this concession opportunity is very complex with multiple scenarios on how Offerors may decide to submit proposals and it is likely that many questions/concerns will develop over a period of

time after work on the proposal package(s) have begun. Some of these potential questions/concerns may not be apparent or realized at the time of the initial meetings and tours. Therefore, this secondary meeting is scheduled to address any subsequent questions/concerns that have developed during the individual proposal package development. Reclamation will be prepared to have the meeting last until 4PM if necessary to address inquiries.

It would be helpful for Offerors to roughly outline their questions/concerns in advance of this midstream meeting to assist Reclamation in accomplishing any necessary consideration/investigation for providing thorough responses. Please submit your written questions/concerns at any time before this scheduled meeting to Mr. Drew Lessard at the following email address [lbprospectus@mp.usbr.gov](mailto:lbprospectus@mp.usbr.gov). Mr. Lessard will hold your questions/concerns for this meeting unless you indicate in the message that you need a more immediate response.

Remember any questions/concerns from prospective Offerors responded to by Reclamation at any time during the Prospectus process will be shared with all other known prospective Offerors.

### **C. FORM IN WHICH PROPOSAL MUST BE SUBMITTED**

You must follow the format provided in the Prospectus in its entirety and without significant alteration when applying for the concession contract(s). Failure to submit a proposal according to these instructions without alteration (except for filling in the indicated blanks) will render your proposal nonresponsive. The need to follow the prescribed format will be important for all applicants but especially a challenge for any Offerors that are submitting a proposal for multiple contract opportunities. General directions on submitting a proposal are located throughout this PART 3 of the Prospectus. Certain 'Special Conditions and Instructions' for Offerors submitting for multiple opportunities are located in Section K of this PART 3 of the Prospectus and as appropriate in various other sections of this Prospectus.

1. **Pagination** - For your proposal to be considered responsive, each page of your proposal must have a page number and must be organized in a logical, easy-to-follow manner.
2. **References** - Each page of your proposal must also reference the location or criterion it is responding to in the Prospectus so the response can be clearly identified (e.g., Principal Factor 3, criterion B3 (b) 2.a).
3. **Additional Information** - Please include any additional information you may deem relevant to your proposal, but stay within the indicated organizational framework of the Prospectus.
4. Offerors are cautioned to submit responses to the Principal Factors in Part B of Part 5 in the exact order they are presented in the Prospectus. Failure to do so may affect the final scores.

### **D. WHERE AND HOW TO SUBMIT A PROPOSAL**

Completed proposals and any modifications must be submitted to Reclamation by 2:00 pm on the due date and sent to the address indicated on the front page of this Prospectus. Proposals may be delivered in any manner convenient to the Offeror during the normal business hours of the receiving office.

1. Submit five hard copies of your proposal(s) following the format of the proposal presented within this Prospectus. Also submit five complete electronic versions on CD/DVDs that also include the projected financial information. If you have drawings or large format plans that do not lend themselves to an electronic format, then you may submit extra hard copies of them with the five

CD/DVDs. Submitting less than the requested number of copies of your proposal will be considered nonresponsive.

2. Proposals and any modifications of those proposals must be enclosed in sealed containers (envelopes, boxes, etc.) and the following should be marked on the container in large letters:
  - a. “LAKE BERRYESSA CONCESSION PROPOSAL PACKAGE, MAIL ROOM DO NOT OPEN.”
  - b. The due date specified in this Prospectus for receipt of the proposal by Reclamation.
  - c. The name and address of the Offeror. Offerors submitting their proposals by an express carrier must include their street address and phone number.

## **E. PROPOSALS AND CONTRACTS WILL BE CONSIDERED PUBLIC DOCUMENTS**

All proposals submitted in response to this Prospectus will be disclosed by Interior to any person, upon request, to the extent required by the Freedom of Information Act (FOIA) (5 USC 552). If you believe that your proposal contains trade secrets or confidential commercial or financial information exempt from disclosure under FOIA, mark the cover page of each copy of the proposal with the following legend:

*The information specifically identified on pages (list page numbers where confidential information exists) of this proposal constitutes trade secrets or confidential commercial and financial information that the Offeror believes to be exempt from disclosure under the Freedom of Information Act. The Offeror requests that this information not be disclosed to the public, except as may be required by law.*

You must specifically identify what you consider trade secret information or confidential commercial or financial information on the page of the proposal on which it appears, and you must mark each such page with the following legend:

*This page contains trade secrets or confidential commercial and financial information that the Offeror believes to be exempt from disclosure under the Freedom of Information Act and which is subject to the notice regarding confidentiality contained on the cover page of this proposal.*

## **F. QUESTIONS**

If you have questions regarding this Prospectus, you must submit your questions, in writing, to the contact person indicated on the front page of this Prospectus, no later than 30 days in advance of the submittal date. Reclamation will respond in writing to your question and will provide the question and response to all potential Offerors through the mail, email or the Prospectus website. Questions received after this date may not be answered. Because Reclamation must provide equal information to all potential Offerors, there must be sufficient time allowed to inform all potential Offerors of such questions and answers.

To the extent appropriate, verbal questions regarding certain aspects of this Prospectus and the existing Fixed Assets will be answered during the scheduled meetings and location tours as identified in preceding section PART 3 section B. Questions asked and answered at these meetings and tours will be reduced to a written document and made available to interested Offerors within 1 week following the actual meetings/tours.

## **G. EVALUATION OF PROPOSALS AND SELECTION**

The minimum requirements for the new concession contract are identified in Part A of PART 5 of the Prospectus. Offerors must agree in their proposal to the minimum requirements of this Prospectus, as identified in Part A, and must provide all the information required by Part B of PART 5 for the proposal to be considered responsive.

The evaluation panel will consider each of the ‘Principal Factors’ as set forth in this Prospectus (Part B of PART 5) by assessing the narrative and other information presented in the Offeror’s proposal in response to the requests for information and questions set forth under each ‘Criterion.’ The Offeror’s response will be evaluated and rated according to one of four categories as “not satisfactory, satisfactory, good, or superior.” Rating points will be assigned between zero and up to the maximum total identified in PART 5.

It will be necessary for a proposal to achieve a “satisfactory” or better rating for each of the five ‘Principal Factors’ to be considered an acceptable or better proposal. A “not satisfactory” rating for any one of the five ‘Principal Factors’ will render an entire proposal “not satisfactory” and will be grounds for rejection.

The evaluation panel will provide a written consensus recommendation to the selecting official (Regional Director or delegate) that outlines in detail the reasoning for the recommendation. The panel will provide supporting information indicating why the recommended Offeror exceeds other Offerors on an overall basis.

## **H. SELECTING THE BEST PROPOSAL**

Reclamation will select as the best proposal(s) the proposal(s) that Reclamation determines will, on an overall basis, best achieve the objectives of Reclamation and is in the best interest of the Government. Reclamation will provide a narrative explanation for the selection.

## **I. PREFERENTIAL RIGHT OF RENEWAL**

No “Preferential Right of Renewal” exists with the current concession contractors. The new contract(s) also will not include any “Preferential Rights” and will be issued in accordance with Reclamation Policy and the associated Directives and Standards.

## **J. CAUTIONS TO OFFERORS ABOUT SUBMISSION AND EVALUATION OF PROPOSALS**

1. All information regarding this Prospectus will be issued in writing. No Reclamation or other Government official is authorized to make substantive oral representations regarding this Prospectus, and no Offeror should rely on any oral representations made by Government officials regarding this Prospectus.
2. The proposal describes all the Principal Factors and criteria, the responses to which will be used by Reclamation to evaluate proposals. You, the Offeror, should ensure that you fully respond to all questions provided under each Principal Factor.

3. This Prospectus and related documents reflect the views and objectives of Reclamation with regard to the proposed concession operation. Should you believe that any statement in this Prospectus is inaccurate, you must submit comments to Reclamation, in writing, no later than 30 days before the due date for proposals. Send your comments to Mr. Drew Lessard at the address on the front page of this Prospectus for Questions and Inquiries. If you send a 'disagreement' with a statement in the Prospectus and Reclamation determines that it is not an inaccuracy, the only response you may receive is a short recognition that the statement is not inaccurate but without any discussion or attempt at dialogue with Reclamation's position outlined in the Prospectus.
4. The information included in this Prospectus, including all appendices and other attachments, is provided to allow Offerors to understand the concession's operations and the acceptable range of the terms and conditions of the new concession contract(s). The information is provided throughout all the documents contained in this Prospectus. Offerors are therefore encouraged to thoroughly review all information and required submittal documents before preparing a proposal.
5. A proposal to expand the scope of facilities or services beyond the already flexible parameters of those identified in this Prospectus may not be considered in the evaluation of proposals. Reclamation recognizes that the flexible nature of these concession opportunities at Lake Berryessa may result in a wide range of proposals and that understandably an Offeror may not always recognize the point when they go beyond the identified parameters. In those situations, Reclamation will not penalize an Offeror for certain aspects of their proposal but may also not consider those parts of the proposal judged to be outside the desired parameters; however, Reclamation will expect Offerors to follow through with ANY aspects of their proposal package that is accepted and that may become a part of Reclamation's determination of a winning proposal.
6. If you propose to make financial commitments in response to any Principal Factors, your proposal will be closely reviewed and analyzed to make sure your financial statements and supporting documents accurately support those commitments. If Reclamation determines that your financial proposal and apparent financial expertise is unrealistic, that could result in your proposal being found nonresponsive.
7. Reclamation shall have the authority to make the final determination of appropriate rates; therefore, the projected financial statements and the benefit to the Government (franchise fee) proposed by the Offeror should reasonably reflect such comparable rates. It should be noted that final approval of rates will be based on a comparability study to determine the appropriate rates the Concession Contractor may charge for goods and services. The study will compare rates in the local and regional markets for similar goods and services.
8. All Offerors must be aware that a part of the proposed or actual 'rate package' may NOT include an 'Entry Fee' charge for entering any of the concession areas. It is appropriate to propose and establish fees for certain types of 'day use', i.e., using picnic facilities, boat launch, swimming facilities, other amenities that have been developed by the concession contractor, etc. Visitors just wishing to visit the concession area and perhaps use the retail and food and beverage facilities or just 'look around' as part of their overall Lake Berryessa sightseeing will not be charged any type of entrance fees by the concession contractor.
9. The proposal and related materials submitted should reflect the entire proposal you wish to submit. Reclamation will consider your written submission as your full and final proposal in response to the Prospectus and will conduct the evaluation of proposals and make a selection of

successful Offeror(s) based on the written information you have submitted. As identified elsewhere in this Prospectus there may be adjustments made to eventual final contracts as a part of the final discussions between Reclamation and successful Offeror(s).

10. The draft concession contract section of this Prospectus (PART 6) and its exhibits, which set forth the terms and conditions governing operation of the concession, are attached. The flexible nature of these contract opportunities means that the draft contract is more of a template in many respects than a nearly finished document. All Offerors must realize and by their signature on the required documents agree to this approach of not having a nearly completed contract until Reclamation selects the winning Offeror(s) and makes final contract adjustments and negotiations as outlined elsewhere in this Prospectus. Reclamation may amend a Prospectus and/or extend the submission date before the proposal due date. Reclamation may also cancel a solicitation at any time before the award of the concession contract if Reclamation determines, in its discretion, that cancellation is appropriate and meets the public interest. No Offeror or other person will obtain compensable or other legal rights as a result of an amended, extended, canceled, or reissued solicitation for this concession contract.
11. The terms, conditions, and determinations of this Prospectus and the terms and conditions of the proposed concession contract, as described in this Prospectus, are not final until the concession contract has gone through final negotiations between a successful Offeror(s) and Reclamation and a contract is awarded and executed. During final negotiations on an eventual contract Reclamation's determination will be final on areas of disagreement.
12. Because of the nature of this Prospectus and eventual contracts, outlined in the Introduction and other sections of the Prospectus, Reclamation is not providing any gross revenue projections as is normally the approach. In typical Prospectus opportunities, the entire business model is essentially complete and identified in the Draft Contract and other Prospectus sections. The many possible variations and combinations of business activities fostered by the approach in this Prospectus preclude Reclamation from providing any meaningful financial Pro Formas. As a part of the planning process, Reclamation did complete an economic feasibility analysis for one scenario (Preferred Alternative B in the EIS) and that analysis demonstrated an opportunity for financial success. As a part of the analysis and evaluation of proposals, Reclamation will have a 'subject matter expert' as a part of the team who is qualified and has experience in reviewing economic feasibility within the Hospitality and Commercial Recreation industries. Offerors should understand that proposals evaluated and found to have financially unreasonable projections may be determined to be non-responsive or at the minimum receive a lower rating.
13. Reclamation may request, from any Offeror who has submitted a timely proposal, a written clarification of its proposal. Clarification refers to eliminating 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 Reclamation to do so and unless Reclamation provides all Offerors that submit proposals a similar opportunity to amend or supplement their proposals.
14. The selected Offeror must execute the concession contract promptly after selection of the best proposal and within the time established by Reclamation. If the selected Offeror fails to execute the concession contract within the time period specified by Reclamation, then Reclamation may select another responsive proposal for award of the concession contract or may cancel the selection and may re-solicit proposals for the concession contract.

15. Document delivery services that offer overnight delivery may not provide true overnight delivery to some areas. Offerors will be responsible for ensuring the timely submittal of proposals by contacting the delivery service of their choice regarding delivery availability and timing for the submittal location specified on the front page of this Prospectus.
16. Reclamation will include, as terms of the eventual new concession contract(s), appropriate elements of the winning proposal(s) selected for award of the concession contract(s). Such appropriate elements of the proposal may include, but are not limited to, components of the Offeror's proposed Operating Plan, Maintenance Plan, Environmental Management Program, or Risk Management Program.
17. Offerors are responsible for undertaking appropriate due diligence with respect to this business opportunity.
18. Offerors should propose base services as described for each concession area in the tables provided in PART 4.C. Offerors are further encouraged to propose additional Fixed Assets and services that promote short-term year-round visitation by the visiting public. Examples of these additional Fixed Assets and services are included in the FEIS, Record of Decision and Table 4-2 of this Prospectus.
19. Offeror(s) should only identify Fixed Assets and services that they intend to provide if selected and none should be considered as optional from the Offeror(s) perspective. Reclamation may identify certain proposed Fixed Assets and services as not in compliance with the FEIS or ROD and therefore not necessary and/or desired. To the extent that any particular service or facility is so noted by Reclamation as 'not desired', its proposal by an Offeror will not be viewed as a negative impact on the remainder of the proposal or the associated evaluation/rating except that if a particular 'not desired' facility or service is such a substantial part of the overall proposal that its removal would measurably impact the economic feasibility. The final negotiated concession contract with any successful Offeror(s) will obligate the new concession contractor(s) to provide all of the services and Fixed Assets identified in their proposal to this Prospectus except any identified by Reclamation as 'not desired'. Each of those services will be stipulated as a requirement of the concession contract, subject to the appropriate contractual obligations and limitations.
20. If during the concession contract term, Reclamation and the concession contractor mutually agree that the concession contractor may provide a service that is not stipulated in the concession contract, the concession contract will be amended to include that service as a requirement of the concession contract, subject to the same contractual obligations and limitations as other stipulated services. A similar action could release a concession contractor from having to provide a service that both parties agree is no longer necessary.
21. Any successful Offeror is not required to retain the existing names for concession areas at Lake Berryessa. As a part of the proposal Offeror(s) may suggest the business name they intend to use but it is not required and can wait until final discussions in advance of finalizing the eventual contract(s). Reclamation must approve the eventual names even if the successful Offeror(s) intends to retain the existing name. For the sake of clarity in this proposal, when referring to specific operations, all Offerors should use the present names.
22. If a previous Concession Contractor at Lake Berryessa is selected as the preferred Offeror on any or all of the six concession locations and they have not complied with any and all applicable requirements of their previous contract, the ROD and the stipulations set forth in this Prospectus

(in regard to previous Concession Contractors) in advance of any final authorization to proceed and in advance of execution of any future contract, then they will not be selected or awarded a new contract. Two specific examples of requirements that must be met in advance of being authorized to operate under a new concession contract or before execution of a new contract at Lake Berryessa for previous Concession Contractors are:

- a. Any material failure to clear concession areas of all property, and
  - b. Any material overdue financial obligations to the United States Government.
23. Bids from contractors or corporate members/officers (including all their members or anyone associated thereof) who are in violation, or have violated, other contracts with Reclamation, or statutory requirements specific to Lake Berryessa, not current in any financial obligations with Reclamation, etc. will not be considered for a new contract.
24. Reclamation will work concurrently with new contractors during negotiations to address any conditions that may delay implementation of selected proposals (e.g. abandoned property).
25. In the response to this Prospectus, all Offerors should provide a chart or table that summarizes their proposed Fixed Assets and services in each location they are bidding on. This chart should include the dates of construction, numbers (or range of numbers) of Fixed Assets and services as proposed by location.

## **K. SPECIAL INSTRUCTIONS AND DISCUSSION FOR: (1) OFFERORS SUBMITTING INDIVIDUAL PROPOSALS FOR MORE THAN A SINGLE CONCESSION OPPORTUNITY OR (2) OFFERORS SUBMITTING A COMBINED PROPOSAL FOR MORE THAN A SINGLE CONCESSION OPPORTUNITY**

As identified in the introduction to this Prospectus and in other applicable sections, this is a unique concession Prospectus opportunity. This Prospectus covers the new opportunities for six individual concession contracts.

There are two approaches besides the standard approach (one single proposal for one location) that an Offeror might select in submitting a proposal or proposals. An individual Offeror may appropriately decide to participate in one or the other or a combination of both. The two additional approaches are:

1. Proposals on More Than One Single Concession Opportunity – This option is basically the same as a traditional package for a concession opportunity with the exception that an Offeror may decide to submit multiple individual proposals for two or more concession locations. For example, an Offeror could submit one proposal for Spanish Flat, a second separate proposal for Putah Creek, and a third for Rancho Monticello. An Offeror could submit up to six separate proposals and could be selected as the successful Offeror on one or any combination (including all six) of the proposals submitted depending upon the strength of their individual packages in competition with other Offerors.

In this scenario, multiple proposals from a single Offeror would be evaluated as separate individual proposals during the proposal evaluation process. If a particular Offeror is selected as the successful Offeror on more than one concession opportunity, Reclamation will combine those two or more operations into a single concession contract. If this situation occurs, all Offerors should understand that certain negotiations will occur to rectify any changes necessary from the individual proposals to satisfactorily combine the operations into a single contract. Under no

situation will Reclamation authorize multiple concession contracts with the same operator but will combine them into a single contract that covers two or more locations.

To the extent possible in finalizing a combined contract, Reclamation and the successful concession contractor will address issues such as length of term, franchise fees, scheduling for capital improvement, maintenance and operating plans, etc. in a manner that considers the submitted individual proposals; however Reclamation's decision is pre-eminent in areas of disagreement, and the concession contractor, if dissatisfied, may decide to withdraw one or more of their successful proposals and just settle on a more limited opportunity.

2. Single 'Combined Proposal' that Includes Two or More Locations – This type of proposal would combine from two to six of the existing operations as a single offer. In this approach, the Offeror would be indicating a preference to operate multiple locations (two to six) in a combined proposal. Such an approach may be preferable to some Offerors because of the flexibility and revenue opportunities in operating multiple locations. There would also be an associated level of increased financial risk and management complexity in operating multiple locations. This approach also enhances the ability of an Offeror to effectively address integration of commercial public services at Lake Berryessa (See Sec. B.2.d of PART 5 of this Prospectus and Sec. III.1.a of the ROD [*at Lake Berryessa Prospectus website*] for important information on the integration of services).

An example of a combined proposal would be one that includes Putah Creek, Rancho Monticello, Lake Berryessa Marina, and Spanish Flat (or any other mixture that may include up to all six) where the Offeror has indicated a desire to operate multiple locations in a single coordinated operation.

As described in PART 5 of this Prospectus, the proposal evaluation process will score combined proposals in a manner that enables a comparison between a specific location i.e., Spanish Flat from the combined approach to any other Offeror submitting a proposal for Spanish Flat whether combined or individual.

*For Example: If 'Offeror A' submitted a combined proposal for Spanish Flat, Rancho Monticello and Putah Creek their submission for the Spanish Flat portion of their proposal would be evaluated against all other Offerors submitting either individual or combined proposals that include Spanish Flat. Therefore, if 'Offeror B' has submitted a proposal that is only for Spanish Flat and 'Offeror C' a proposal for Spanish Flat and Putah Creek, Reclamation will look at each of their particular proposals as it applies to Spanish Flat to draw a conclusion regarding the differences and similarities as it pertains to just Spanish Flat. **However, Reclamation will consider how multiple location Offerors have addressed the overall level of facilities and services to assure that they are not penalized for not having a specific type of operation, i.e. an RV Park at a particular location if they have adequately covered that need elsewhere. (See more detailed descriptions of these factors in Criterion B2 (d) of PART 5 of this Prospectus)***

The same review/evaluation process will occur for each of the six concession areas as Reclamation makes determinations on which Offeror(s) submit the best proposal for individual locations and/or combined operations.

Because of the operational and managerial flexibilities inherent in a combined proposal, Reclamation will consider the overall combined impacts and provision of services in a combined proposal when comparing it to other (individual or combined) proposals for the same locations.

*For Example: Assume that an individual Offeror 'A' proposes for Spanish Flat, a well designed 50 site RV Park, a marina similar in size and function as currently exists, 25 short term cabins, 12 long term occupancy cabins, and a combined food & beverage and retail facility that fits satisfactorily with Reclamation's general desires for that area. While at the same time Offeror 'B' submits a combined proposal including Spanish Flat and several other locations that does not include RV sites at Spanish Flat but focuses instead on development of a similar Marina, 55 short term cabins, small full service cafe and a retail facility. They do not include an RV Park at Spanish Flat but do a very good job of adequately including RV Park components at other locations in their combined proposal. In this scenario it might seem that Offeror 'A' would score higher because of their address of an RV Park that Reclamation perceived as a positive addition at Spanish Flat, while Offeror 'B' did not. However, because Offeror 'B' had effectively addressed the overall need at other locations, Reclamation may determine that the 'A' proposal, while good, is not necessarily superior for the Spanish Flat location.*

If Reclamation believes that a combined proposal on multiple locations is very good and in an overall manner more effectively addresses the integration of services and facilities resulting in a potentially better business mix and coordination of lakewide public services, they may select that Offeror as an apparent successful proposal. Any selections as a new concession contractor whether from a multiple or individual proposal is conditional on final negotiations between Reclamation and the Offeror(s) as earlier outlined in the 'Introduction to the Prospectus'. Because of the significant level of flexibility for Offerors in this Prospectus and the wide range of likely proposed business components Reclamation reserves the right to adjust proposals in the final negotiations to eliminate certain components that may not be seen as necessary or appropriate or to add components believed important by Reclamation. These final negotiations will be more in the manner of 'fine tuning' a submitted proposal. The final approved operation is still obviously very recognizable from an Offerors' original proposal. If any conditional winning Offeror does not feel they can agree to the 'fine tuning' proposed by Reclamation, and an impasse is reached, then Reclamation may select the next highest Offeror or even re-advertise an individual location if it seems, in Reclamations judgment, that an effective proposal for any particular location does not exist.

Reclamation recognizes that an individual or company that submits a combined proposal covering multiple locations, as highlighted in the previous examples, may have structured the finances and proposed operational components of their overall proposal in such a manner that any deletion of a particular location from their overall combination might result in their non-interest or unwillingness to consider something less. However, Reclamation may determine that a combined proposal for multiple properties may be very good except for the submission on one or two of the locations OR that another Offeror has such a superior proposal for a particular location that the subjects combined proposal does not compensate for the other Offerors proposal in that one location. In that case, Reclamation may inform an Offeror that has submitted a combined proposal on, for example, six locations, that they have been selected as a winning Offeror on four of those locations and that a final contract for those four will be negotiated. The Offeror that presented the package for 5 properties in this example could decide they are not interested in accepting a lesser package than their proposal in which case Reclamation would go to the next highest Offeror(s) for the remaining four locations. However if the subject combined Offeror did

agree to accept the conditional package that included four locations instead of the six they proposed, then Reclamation would negotiate final contract terms and conditions (contract length, franchise fees if any, final level of investment and construction schedule, any necessary adjustments to proposed services and facilities necessary, etc.) to appropriately cover an operation of 4 locations in a new contract.

These are complicated options that all Offerors should be prepared to discuss during the previously identified meetings with Reclamation to eliminate any confusion or concerns.

In recognition of preferences outlined during the EIS and Concession Planning process and the associated added risk and investment requirements those Offerors who determine to submit either individual or combined proposals for more than a single location may receive additional points during the evaluation process. Please review Criterion B.2.(d) in PART 5 of this Prospectus for a complete detailed explanation of this potential scoring addition.

## **L. OWNERSHIP OF FIXED ASSETS**

1. The ownership and disposition of facilities are addressed in PART 6, Section 5 of this Prospectus and summarized below for convenience. In the event of any inadvertent inconsistencies, rely on the language in PART 6.
2. All Fixed Assets placed by the Concession Contractor within the concession area shall be considered the property of the Concession Contractor. Any permanent additions or modifications to these Fixed Assets shall remain the property of the Concession Contractor. Prior to expiration or upon termination of this contract, Reclamation has the option of requiring that some or all of the Fixed Assets be removed by the Concession Contractor without compensation. If commercial concession operations continue after termination or expiration of the contract and the previous contractor is not the new contractor, then Reclamation will require the new contractor to purchase those Fixed Assets Reclamation has required not to be removed, such value for the purchase of these Fixed Assets to be determined by US Government appraisal. If concession operation continues by the US Government after expiration or termination then, subject to appropriations, Reclamation also has the option to pay the prior concession contractor the value of those Fixed Assets Reclamation has determined to remain, such value to be determined by US Government appraisal.
3. All Government appraisals shall conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as implemented in accordance with the Department of the Interior's Appraisal Services Directorate "Appraisal Policy Manual".
4. If the parties dispute as to the value of any facility as appraised by Reclamation, the decision of Reclamation as to such value shall be final and binding upon all parties.
5. If this agreement is terminated or expires and Reclamation no longer requires operation of the concession, the Concession Contractor shall have the right to remove Fixed Assets and improvements within the concession area unless Reclamation requires some or all to be left in place for sale in accordance with PART 3.L.1. Fixed Assets not removed by the Concession Contractor upon termination or expiration of this agreement shall be deemed to have been abandoned by the Concession Contractor. Title to all such abandoned Fixed Assets shall be vested in the United States. The Concession Contractor will be liable for removal and clean-up costs incurred.

## **N. FULLY DESCRIBING THE NEW PROPOSED CONCESSION OPERATIONS AND FACILITIES IN THE OFFEROR'S RESPONSE TO THIS PROSPECTUS**

This flexible approach that permits Offerors to provide their own vision for concession operations at specific locations at Lake Berryessa during the next contract term also implies certain important obligations upon those Offerors in preparing their proposals (See PART 5 of this Prospectus for more details on these necessary Offeror descriptions).

## **O. INFRASTRUCTURE ISSUES AT STEELE PARK CONCESSION AREA**

Reclamation anticipates that during the term of this concession contract, the Concession Contractor will find it necessary to pay additional costs for ongoing and additional services to be provided or required by Napa County and/or other state or local government entity or agency that are necessitated by the use, rights and privileges granted under this concession contract, which are not presently identifiable, and the Concession Contractor agrees to pay such costs deemed appropriate and approved by Reclamation. Such fees, charges, and assessments, ("charges") and required actions may include, but are not limited to, charges for the installation, modification, and or expansion of water and sewer systems, emergency and fire services, law enforcement services, road improvements, environmental and water quality compliance actions, and other activities.

Reclamation has determined that such costs are a necessary expense of this concession contract and as such, the Concession Contractor shall collect additional revenues during the term of this concession contract to offset such costs. The Concession Contractor will begin to collect a supplemental 5% surcharge within 90 days of the effective date of this concession contract, on all goods it sells (excluding gasoline and diesel fuel) and on all services it provides for which it is not required to pay a Transient Occupancy Tax as defined by applicable county ordinance.

As of the date of this Prospectus, the only charge of this type approved by Reclamation is an assessment by the Napa Berryessa Improvement District (District) for a new water and sewer system serving 577 parcels in southeastern Napa County and including Steele Park concession area. The future Concession Contractor for Steele Park will be required to pay its share of the project costs as assessed by the District. The District currently assumes Steele Park's share of the new system is approximately \$4.3 million of which \$2.6 million is associated with sewer improvements, and \$1.7 million is for water system improvements. The future Concession Contractor is authorized to establish and apply the supplemental surcharge to meet this obligation. Additional information on the District can be found at: <http://www.co.napa.ca.us/GOV/Departments/DeptPage.asp?DID=17500&LID=636>

## **P. CONCESSION AREA NAMES**

Reclamation intends that the current names for each of the concession areas may be changed. The names will be determined in consultation between Reclamation and the eventual successful Offeror(s). Reclamation will have final determination on all area names.

## **Q. IF AN AREA RECEIVES NO BIDS OR NO ACCEPTABLE BIDS**

If there are no satisfactory bids or bids on a specific area that Reclamation determines to be acceptable, Reclamation may determine to not develop the area as a concession.

## **R. Interim Contracts**

Steele Park Resort will be providing marina services under an interim contract for the 2009 season. That interim contract will expire on October 31, 2009 and all facilities removed no later than February 28, 2010. Markley Cove Resort will be operating under an interim contract to maintain services and Fixed Assets at Markley Cove for public use during this contract transition period. The Markley Cove Resort interim contract will expire May 26, 2011 but may be extended to May 26, 2013 if mutually agreed to by the existing concession contractor and Reclamation. If the successful Offeror is the interim Concession Contractor, then that interim contract will be terminated on the date their new contract is executed. If the successful Offeror for this location is not the current interim concession contractor then the new contract will be executed or amended as required for these areas in question when the interim contract(s) expire.

## **S. Existing Site Conditions**

Due to the expiration of the previous 50-year contracts, and the subsequent requirement to remove Fixed Assets, there is ongoing cleanup, debris removal and site preparation at Spanish Flat Resort, Rancho Monticello Resort, Lake Berryessa Marina, and Putah Creek Resort. These efforts are concurrent with the release of this Prospectus; therefore, a site visit is highly recommended. Refer to site visit schedules in Part 3.B.

## **T. Non-Exclusive Use**

Private exclusive recreational or residential use as defined and explained in 43 CFR Part 429, Use of Reclamation Land, Facilities and Waterbodies, will not be allowed.