Background and Purpose of the Following Draft, Reclamation Manual (RM), Directive and Standard (D&S), Concessions Management by the Bureau of Reclamation (LND 04-01).

The purpose of RM D&S, Concessions Management by the Bureau of Reclamation (LND 04-01) is to provide requirements for planning, development, and management of concession opportunities at Reclamation’s direct-managed recreation areas; and for providing visitor services, amenities, goods, and opportunities on Reclamation lands and waterbodies. The benefit of LND 04-01 is the establishment of uniform requirements for management of concessions at direct managed recreation areas.

LND 04-01 was originally released in 2002 and is currently in need of revisions to ensure it continues to be an effective and value-added document. LND 04-01 is a working document that provides concessions management requirements and direction for staff involved in Reclamation’s recreation program at direct managed recreation areas.

Reclamation’s LND 04-01 revisions team working on the modifications to this D&S is comprised of Reclamation subject-matter expert representatives from all regions, including staff involved in Reclamation’ recreation program and staff in the Dam Safety and Infrastructure directorate.

The RM is used to clarify program requirements, responsibilities, and authority; and to document internal Reclamation-wide methods of conducting business. All requirements in the RM are mandatory.

See the following pages for the draft D&S.
Reclamation Manual
Directives and Standards

Subject: Concessions Management by the Bureau of Reclamation

Purpose: To establish requirements for planning, development, and management of concession opportunities at Reclamation’s direct-managed recreation areas, and for providing visitor services, amenities, goods, and opportunities on Reclamation lands and waterbodies. The benefit of this Directives and Standards (D&S) is the establishment of uniform requirements for management of concessions at direct managed recreation areas.

Authority: See Appendix A in Reclamation Manual (RM), Policy, Concessions Management, LND P02

Approving Official: Director, Dam Safety and Infrastructure

Contact: Asset Management Division (86-67200)

1. Introduction. Reclamation’s authorities provide for recreation opportunities and allow for qualified concessionaires to manage facilities and services on lands and waterbodies in response to public demand and specific needs identified in planning documents. Both for-profit and non-profit organizations may be qualified as a concessionaire.

2. Applicability. This D&S applies to all Reclamation employees who oversee concessions, including the planning, development, and management of concessions on lands and waterbodies at direct managed recreation areas. RM Policy, Concessions Management, LND P02; RM Policy, Recreation Program Management, LND P04; and RM D&S, Recreation Program Management, LND 01-03 provide mandatory provisions for a wide variety of recreation activities.

3. Existing Concession Contracts.

   A. Compliance. The authorized official must ensure that existing and future concession contracts are brought into compliance with the LND P02 and this D&S at the first legal opportunity, for example, when an existing contract is amended, or a subsequent future contract is executed upon expiration or termination of an existing contract.

   B. Unusual Circumstances. In the event that unusual circumstances prevent the authorized official from issuing a new contract in a timely manner, the authorized official has the discretion to issue a temporary contract. The authorized official must ensure that the temporary contract complies with LND P02 and this D&S. The temporary contract will be issued on a year to year basis, pending reviews and audits, for a period not to exceed 2 total years. If it is determined by the authorized official that there is a need for a period longer than 2 years, the authorized official will provide...

A. General. The various types of planned concessions activities will be based on a broader planning process for the entire recreation area, including resource management plans. The scale of planning will be commensurate with the size of the recreation and concessions operations. Concessions development will adhere to the concession’s principles listed in LND P02 and be based on appropriate plans developed by Reclamation’s regional and area office employees who oversee concessions.

B. Planning Responsibilities. The authorized official is responsible for determining the need for concessions operations. Before issuing a request for proposal and awarding a contract, Reclamation’s regional and area office employees who oversee concessions will ensure the completion of a formal commercial services plan, including a financial feasibility evaluation for direct managed concessions opportunities. These employees will allow adequate time to complete the commercial services planning process, develop a contract and request for proposal, and receive the Dam Safety and Infrastructure Office’s review and approval of the contract and request for proposal. The planning for new concession contracts must begin no less than 2 years in advance of the anticipated date the contract will be awarded.

1. Commercial Services Plan. The commercial services plan will be an addendum to a resource management plan or similar planning document. At a minimum, the commercial services plan must determine the number of concessions necessary to meet the public needs, the type of facilities and services to be provided, the financial feasibility of the operations, and the location(s) appropriate for commercial activities. The complexity of commercial services plans will vary according to location, historical visitation data, estimated future revenues, and other factors, as appropriate.

2. Financial Feasibility Evaluation (FFE). A documented determination of the financial viability of the proposed concession operation, including total benefits to the Government, a justification for the proposed length of term for the concession contract, and the underlying assumptions regarding concessionaire capital investment in the concessions operations must be included in the FFE. The FFE must be developed by a subject matter expert such as an economist, accountant, social scientist, an industry professional, or a Reclamation employee skilled in the development of an FFE. The level of evaluation shall be commensurate to the proposed level of services and capital improvements.
C. Commercial Services Planning Process. Reclamation’s regional and area office employees who oversee concessions shall facilitate the preparation of commercial services plans, FFEs, request for proposals, and concessions contracts at direct managed recreation areas. Decisions to contract for concessions must be based on the results of the commercial services planning process, including public involvement, an FFE, and an environmental analysis. The authorized official will ensure the following criteria will be applied to determine appropriate facilities and services during the planning process:

1. Facilities and services must be compatible with Reclamation project purposes.

2. Facilities and services must be necessary and appropriate for a broad spectrum of public use and enjoyment.

3. Facilities and services must reflect the general public’s expressed needs rather than the desires of a particular individual or group. Existing concessionaires will be able to provide input through the public involvement process.

4. The FFE must consider the following:
   
   (a) Gross revenues (i.e., receipts) from the concessionaire’s operating department (e.g., lodging, food, and beverage).

   (b) Operating expenses:
       
       (i) Direct expenses by the concessionaire’s operating department, including labor and cost of goods sold.

       (ii) Unallocated expenses, including the concessionaire’s utilities, repair and maintenance expenses.

       (iii) General and administrative expenses, including the concessionaire’s overhead, officer salaries, office supplies, and travel.

       (iv) Fixed expenses, including the concessionaire’s rent, interest, depreciation, and reserve accounts.

       (v) Franchise fees that will be paid by the concessionaire.

       (vi) Taxes to be paid by the concessionaire.

   (c) Earnings before interest, depreciation, taxes, and amortization (EBIDTA); which is a standard accounting value representing net operating income.
(d) Capital investment costs, including:

(i) working capital;

(ii) furniture, fixtures, and equipment;

(iii) ongoing capital replacement; and

(iv) new facility development costs.

(e) Cash flow analysis.

(f) Other appropriate factors that influence the concession’s business opportunity, including length of season, rates, visitation, inflation, cost of future capital, and the appropriate target rate-of-return to concessionaire.

(5) Reclamation will not allow facilities, services, or sites considered to be new private exclusive recreational or residential uses as a part of any commercial services planning effort. At the discretion of the authorized official, concessions owners and their employees are allowed to reside on the Federal Estate to safeguard facilities and be available for public assistance. At the end of a concessions contract, the authorized official will ensure concessions owners and their employees are required to vacate the premises and leave it in a state acceptable to the authorized official.

(6) Potential impacts to natural and cultural resources must be considered in the development of facilities and services, and appropriate steps must be taken to mitigate adverse impacts.

(7) Facilities must be harmonious with the surrounding landscape. Standard design guidelines are found in the Recreation Facility Design Guidelines located by accessing the following link: https://www.usbr.gov/recreation/publications/RecreationFacilitiesDesignGuidelines.pdf.

(8) The planning process will consider whether existing concession facilities will be relocated because:

(a) they would serve the public better at a different location,

(b) they are situated in an area that is topographically limited (e.g., steep slopes, soils subject to erosion, limited space for expansion, or the site cannot accommodate the demand),
(c) they cannot provide the best public services and facilities, or

(d) the FFE determines that combining one or more existing concessions would create a more financially stable operation.

(9) If existing fixed assets are proposed to be retained as a part of any new concession operation, they must first be formally evaluated to determine if their existing condition and useful life is sufficient to last through the duration of a new contract. If the evaluation determines that fixed asset would need significant maintenance, repairs, or would need to be replaced during the term of the new contract, then the authorized official will have the discretion to require removal by the existing concessionaire prior to issuing a new contract.

(10) Concession contracts and operations must comply with all applicable Federal, state and local laws, regulations, Executive Orders (E.O.), Secretarial Orders (S.O.), and Policies and D&S.

5. **Concessions Contracting.**

   A. **General Application.** The authorized official will ensure that this D&S will apply to existing concessions contracts that were executed prior to the revision date of this D&S only if agreed to by both the authorized official and the concessionaire. Except in unusual circumstances, the authorized official will ensure that existing contracts will not be renewed and the length of the term is not extended. Existing contracts that are amended or modified, subsequent to the revision date of this D&S, must adhere to the requirements of LND P02 and this D&S. The authorized official will ensure that new or replacement contracts will be awarded on a fully competitive basis.

   B. **Request for Proposals (RFP).** The authorized official will ensure that an RFP will be issued to actively solicit offers from interested parties. To allow for a wide distribution, the RFP will be published in the appropriate media sources, such as FedBizOps, the Federal Register, Reclamation websites, or local media outlets. The following approach will be applied:

   (1) **Fair Competition.** To ensure fair competition before and during the RFP process, Reclamation’s regional and area office employees who oversee concessions will ensure that individual meetings to discuss the RFP with existing or potential concessionaires or other outside parties must not be conducted. It is appropriate to have meetings with existing concessionaires to deal with ongoing operational or contractual issues and programs. Reclamation’s regional and area office employees who oversee concessions will ensure that the RFP includes a schedule of meetings in which all interested parties discuss requirements of the RFP. Other meetings requested by individual interested parties must be declined.
(2) **Equal Access to Information.** All information must be equally available to all interested parties during the RFP process.

(3) **Written Explanation.** Following release of an RFP, Reclamation’s regional and area office employees who oversee concessions will ensure that explanations or clarifications will be provided only in writing and are sent to all parties who have received the RFP; and to any party who is to receive the RFP in the future.

(4) **Existing Concessionaires.** Reclamation’s regional and area office employees who oversee concessions must ensure an existing concessionaire responds to the RFP as a bidder to be considered for the new contract.

C. **Review of Proposals.** A panel composed of Reclamation “subject matter experts” (e.g., financial, recreation, and concession experts) will be convened to review submitted proposals. The authorized official has the discretion to contract with external experts to assist in analyzing offers. The area office staff involved in concessions will provide selection criteria and instructions to the panel. The panel will forward a recommendation to the authorized official. The evaluation of proposals and review panel instructions are located in Appendix B of this D&S.

6. **Contract Terms and Conditions.** The authorized official must ensure the following items are specifically addressed in concessions contracts:

A. **Standard Contract Language.** Standard concessions contract language will be used to ensure compliance with all applicable laws, regulations, E.O., S.O., and the Policies and D&S listed in section 2 of this D&S. Examples of standard contract language are found in the Reclamation Concessions Management Guidelines.

B. **Interim Operator.** At the discretion of the authorized official, an interim operator will be selected if a contract is not in place at the time the existing contract expires or is terminated. Contract terms and conditions must be modified to reflect current policies and D&S. The authorized official has the discretion to select the existing concessionaire as the interim operator if the existing concessionaire is performing in a satisfactory manner. The interim contract will only be issued annually and must not exceed a total of 2 years, in accordance with the prerequisites set forth in section 3.B of this D&S, that a longer period is needed due to unusual circumstances. A new contract must be awarded as expeditiously as possible.

C. **Required and Authorized Visitor Services.** Reclamation’s regional and area office employees who oversee concessions must ensure that contracts outline the specific types of services, facilities, goods, and activities that a concessionaire is required to provide. The contract will also specify services, facilities, goods, and activities the concessionaire is authorized to offer. It must be clear that those required services are
not optional and must be provided. Any service, facility, goods or activity not identified as either required or authorized in the contract is not allowed without a contract amendment or written authorization from the authorized official.

D. Sale and Transfer. Reclamation’s regional and area office employees who oversee concessions must ensure that concessionaires or parties holding interests in a concession contract will not sell, assign, or transfer their interests or a part of their interests to another party without the prior written approval of the authorized official. The authorized official will require concessionaires to complete and submit all sale and transfer information as required by the regional and area offices before approval of a sale or transfer of all or any portion of a concession operation will be considered.

(1) Proposed Transfer. A proposed transfer of interest is subject to the same evaluation process as specified by Appendix B of this D&S, that is performed for a new concession contract. The authorized official must approve a proposed sale or transfer or choose to place conditions on the approval. Refer to the Reclamation Concessions Management Guidelines for more details on a sale and transfer.

(2) Change of Original Contract Terms. Concession contracts will provide that the terms and conditions are subject to modification by the authorized official before approval of a sale or transfer. The authorized official has the discretion to reduce but not extend the length of term.

E. Default and Non-performance. Clauses addressing default, penalty, and termination will be included in all concession contracts. The review and evaluation process will be critical to assist in determining whether a concessionaire is in default or not meeting the terms of the contract. The contract will also allow the authorized official to require a surety or performance bond at any time, collect penalties and administrative costs for default and non-performance, and terminate the contract.

F. Minimum Wage Contract Clause. All concessions contracts issued, modified, or amended after January 1, 2015, must include the Minimum Wage Contract Clause specified in Appendix A of this D&S, pursuant to E.O. 13658, Establishing Minimum Wage for Contractors.

G. Length of Term. The authorized official will ensure that the term of all contracts will be based primarily on the investment required of the concessionaire, as determined through the FFE. New contracts cannot contain renewal clauses.

H. Subconcessions. The authorized official must ensure that all subconcessions contracts meet the terms and conditions of the prime concession contract. The authorized official
must approve all subconcessions contracts before a contract is signed between the prime and subconcessionaire contractors.

I. **Capital Improvement Program.** All designs for construction must be approved in writing by the authorized official and must comply with applicable environmental, accessibility, and historic preservation laws and regulations; and building code requirements. In areas where state or local construction standards are not available, the regional and area offices will provide appropriate standards. The Architectural Barriers Act standards or a stricter state/local code, as applicable, will apply for accessibility standards. Where required and before construction, the concessionaire must obtain all required building permits from the local authorities. A Capital Improvement Plan must be provided prior to initiating any construction activities.

J. **Environmental Compliance.** The authorized official must ensure that concessionaires are required to follow all applicable Federal, state, and local environmental laws and regulations. The authorized official must ensure that the concessionaire provides all required certifications and permits, as the responsibility of the concessionaire. Concession contracts will address all activities with potential environmental impacts including, but not limited to:

1. the scheduled replacement of non-encapsulated polystyrene (Styrofoam™) with another acceptable dock flotation device,
2. hazardous materials storage, handling, and disposal.
3. invasive and nuisance species management,
4. soil erosion mitigation,
5. water pollution management, and
6. other site-specific environmental concerns, as required.

K. **Flotation for Facilities on Reclamation Waters.** Materials shall be of the kind that will not become waterlogged, are resistant to damage by animals, and will not sink or contaminate the water if punctured. Approved flotation materials include extruded polystyrene, polyethylene, and expanded polystyrene, all of which have been encased with a protective covering that is warranted by the manufacturer for at least 8 years against cracking, peeling, sloughing, and deterioration from ultra violet rays while retaining its resiliency against ice and bumps by watercraft. The authorized official will ensure that both Reclamation and the concessionaire agree to a timeline to replace existing flotation that does not meet this section of this D&S.
L. **Interpretation and Thematic Programs.** The authorized official will ensure that contracts require concessionaires, to the extent possible, to support Reclamation’s educational efforts through such actions as developing interpretive and area thematic messages in printed material (e.g., marketing, correspondence, etc.), using outdoor signs, and developing formal programs, as appropriate. The authorized official will also take steps to ensure that all interpretation and thematic programs meet accessibility standards for the associated materials presented or described.

M. **Operation and Maintenance Plan.** The authorized official will ensure that concessionaires prepare an annual operation and maintenance plan, which must be approved by the authorized official. Concession contracts must clearly state exactly what the plan will contain. Reclamation’s Concessions Management Guidelines provide an example of a list of operation and maintenance items to be considered for inclusion in the plan. The authorized official will ensure that the concessionaire is required to operate and maintain revenue generating assets essential to visitor services in a manner that extends the useful life and prevents asset deterioration throughout the duration of the contract term.

N. **Preferential Right of Renewal.** Concession contracts will not include a preferential right of renewal.

O. **Ownership of Fixed Assets Constructed by Concessionaires.** The authorized official will ensure that title to fixed assets will be established by a concessionaire to the extent the asset is purchased from a previous concessionaire, or paid for and constructed by the concessionaire, with prior approval from the authorized official. Concession contracts will specify whether fixed assets located on the Federal estate by a concessionaire will remain on the Federal estate or be removed at the end of the contract.

(1) **Approval of Improvements.** The authorized official will ensure that s/he receives the required documentation for any new investment in fixed asset improvements by the concessionaire, as described in section 6.1. of this D&S. The documentation must include a schedule and details describing the construction; and must be approved in writing by the authorized official before commencement of construction activities.

(2) **Assets That Remain with the United States.** Concessionaires do not automatically have a right to compensation for fixed assets from the United States upon contract expiration or termination. However, at the option of the authorized official when appropriated funds are available and the facilities are necessary for future operations of the site, the regional and area offices will purchase a concessionaire’s remaining assets at the appraised market value. Refer to RM,
D&S, *General Property, Plant, and Equipment*, FIN 07-20 for proper capitalization of assets acquired by the United States.

(3) **Assets That Remain to be Purchased by a New Concessionaire.** Upon expiration, termination, or sale or transfer of a concession contract, fixed assets will remain on the Federal estate if they were determined to be necessary for future recreation related opportunities. If the fixed assets are needed for the concession operation, the authorized official must ensure that they are purchased by the new concessionaire at the appraised market value.

(4) **Assets to be Removed.** Assets that have not been purchased or will not remain upon the Federal estate, as determined by the authorized official upon expiration or termination of the contract, will be removed by the concessionaire.

P. **Area of Operation.** Each contract will authorize and define the physical area necessary to conduct the business activities allowed by the contract. The contract must include a description and a detailed map. Concession boundaries must be easy to recognize by the visiting public.

Q. **Additional Facilities or Services.** Additional facilities or services are not allowed without advance approval by the authorized official. The authorized official has the discretion to amend a concessions contract at the request of the concessionaire to include limited additional facilities or services, as determined by the authorized official, that meet public needs that were not identified in the RFP. A major expansion of facilities or services, as determined by the authorized official is not permitted.

R. **Total Benefits to the Government.** The authorized official will determine and recover fair compensation, including direct returns and direct and indirect benefits, for the use, rights, and privileges granted under a concession contract. The concession contract will specify the direct returns and direct and indirect benefits.

(1) **Thresholds.** Targeted thresholds of total benefits will be developed to determine the optimal combination of payments. These will be used in advertisements, RFPs, and renegotiations to seek appropriate benefits to the Government and the public.

(2) **Direct Returns (Disposition of Fees).** The appropriate disposition of recreation or concession fees depends on the land status and authority used to collect the fees. Refer to the RM, *Crediting of Incidental Revenues*, (PEC 03-01) for further information. Except as otherwise provided in a project specific authorization, fees collected pursuant to Reclamation law will be disposed of as follows:
(3) Fees generated by concessions or recreation activities on withdrawn project lands are deposited in the Reclamation Fund.

(4) Fees generated by concessions or recreation activities on lands acquired for project purposes are deposited in the Reclamation Fund to the credit of the project.

S. Utility Services Provided by Reclamation. The value for utility services provided by Reclamation will be based on the recovery of full operating and replacement costs for utility capital investments and comparable utility rates. If the FFE determines that it would not be feasible for the concessionaire to pay rates which would compensate Reclamation for its total capital and operating costs, the authorized official must determine any appropriate utility service rates that will be applied. Utility services include, but are not limited to, electricity, power, water, waste disposal, gas, and communication systems.

T. Private Exclusive Recreational and Residential Uses. Reclamation prohibits any use that would result in new private exclusive recreational or residential use of Reclamation land, facilities, or waterbodies pursuant to 43 CFR Part 429. Private exclusive recreational or residential uses that are within the terms and conditions of an existing use authorization, as specified in 43 CFR Part 429 is not considered new private exclusive recreational uses. Existing private exclusive recreational or residential uses will be administered under 43 CFR Part 429 and 43 CFR Part 21, as applicable.

U. Sale of Personal Property. The sale of personal property other than the approved concessions inventory is prohibited on the Federal estate. No party other than the concessionaire will be permitted to sell personal property, including but not limited to vehicles, manufactured or mobile homes, house trailers, travel trailers, boats, or personal watercrafts on the Federal estate. The authorized official has the discretion to allow the concessionaire to broker the transaction of watercraft sales owned by private individuals, as authorized in the contract. If a private individual does not want to sell their watercraft through the concessionaire, the individual must be asked to remove the watercraft from the Federal estate and sell it elsewhere.

V. Rates and Merchandise. The authorized official will ensure that rates charged by the concessionaires are based on comparable rates for facilities, services, food, and merchandise rates in the geographic proximity. The authorized official must approve the rates requested by concessionaires. Approved rates will ensure a fair return to the concessionaire and a reasonable charge to the public. The authorized official must ensure that any rates in excess of comparable rates are thoroughly justified and supported in writing by the concessionaire and approved by the authorized official.
W. **Concessions Safety Program.** The authorized official must ensure that concessionaires are responsible for providing and ensuring a safe and healthy environment for both the visiting public and employees by developing, implementing, and administering health and safety programs to ensure that concession areas are managed in compliance with Federal, state, and local laws, and regulations. The results of county or state health inspections will be provided to the authorized official within 90 days of the report. Violations which result in the shutdown of services shall be reported to the authorized official immediately.

X. **Food Sanitation.** The authorized official must ensure that concessionaires’ food services will comply with Federal, state, and local food handling and sanitation laws, rules, and regulations. Copies of inspection reports will be provided to the authorized official within 90 days of the report. Violations which result in the shutdown of food services shall be reported to the authorized official immediately.

Y. **Insurance Program.** The authorized official must ensure that concessionaires have an insurance policy that will indemnify the United States and meet applicable state requirements. All liability policies will provide that the insurance company will have no right of subrogation against the United States and will provide that the United States is named as an additional insured. The authorized official must be provided with a certificate of insurance by the insurance agent to confirm that the above requirements are met before development begins or operations commence. The authorized official must ensure that concessionaire provide the regional and area offices with a copy of each insurance renewal certificate throughout the term of the concession contract. The authorized official will establish a minimum insurance requirement based on the facilities and services offered by individual concessions.

Z. **System of Recordkeeping.** The authorized official must ensure that concessionaires complete Reclamation’s Annual Financial Report (AFR) form, or other documentation as specified in the concessions contract. The AFR forms will be provided by Reclamation’s regional and area office staff who oversee concessions. The AFR forms will be modified based on the size and scale of the operation.

AA. **Advertising and Signs.** All identification signs and promotional material, regardless of media format (i.e., printed, electronic, broadcast), provided to the public by the concessionaire in connection with the services provided under the concession contract must be approved in writing by the authorized official. Outdoor signs must also be displayed on the Federal estate and require prior written approval of the authorized official. Outdoor signs must meet Reclamation’s Visual Identity standards, must be displayed on the Federal estate, and require prior written approval of the authorized official.
(1) All identification signs will display the Reclamation logo and identify the location as an authorized concessionaire of the Bureau of Reclamation, Department of the Interior.

(2) Reclamation’s regional and area office staff who oversee concessions must ensure that concessionaires notify the public that they are authorized by Reclamation to conduct business on the Federal estate. At a minimum, all such information will identify the concessionaire as an authorized concessionaire of the Bureau of Reclamation, Department of the Interior.

(3) Use of the Reclamation seal, logo, or name must be approved by the authorized official before it is displayed in advertisements or on signs.

BB. Statistical Data. Statistical data is utilized for various purposes such as reporting to the Department, the Commissioner’s Office, and Congressional Research Service, as well as for determining whether recreation programs will be increased or expanded. In addition, the recreation related data will assist with Reclamation’s planning efforts. As such, the authorized official must ensure that concessionaires furnish information at a minimum annually, or as needed, and in the manner specified by the authorized official. This information shall be produced in a timely manner. If the concessionaire is not tracking the data requested, Reclamation’s regional and area office employees who oversee concessions will require that the concessionaire begin tracking such data.

CC. Concessions Reviews. Reclamation’s concessions reviews will be consistent with RM D&S, Review of Operation and Maintenance Program Examination of Associated Facilities (Facilities Other Than High and Significant-Hazard Dams), FAC 01-04. In addition to the frequency of reviews set forth in FAC 01-04, Reclamation’s regional and area office staff who oversee concessions will determine when risks are such that more frequent reviews, such as annual reviews, are required. The reviews will examine, at minimum:

(1) the extent to which the concession operation meet LND P02 and this D&S,

(2) the extent to which the concession activities are consistent with resource management plans and commercial services plans,

(3) the extent to which the concessionaire is in compliance with the contract provisions, especially with respect to building improvements, operations, prices charged by concessionaires, fees returned to the Government, and annual financial reporting to Reclamation,

(4) self-evaluation and transition plans and reports associated with the removal of barriers pursuant to Title III of the ADA, Section 504 of the Rehabilitation Act,
and 43 CFR part 17, Nondiscrimination in Federally Assisted Programs of the Department of the Interior,

(5) the quality and condition of the facilities and services related to the health and safety of the employees and the visiting public,

(6) the recordkeeping system(s) used by the local Reclamation office to determine that the concessionaire uses generally accepted accounting practices,

(7) the recordkeeping system(s) used by the local Reclamation office to conduct quarterly and annual reviews,

(8) the local Reclamation office records regarding the annual reviews and annual rating, and

(9) traditional operation and maintenance activities as listed in the content section of FAC 01-04.

DD. *Notice of Violation.* Reclamation’s regional and area office employees who oversee concessions will require that the concessionaire immediately notify the appropriate regional and area office of any actual or proposed notice of violation from other regulatory agencies of any applicable laws and regulations arising out of the activities of the concessionaire, its agents, or employees.

EE. *Disputes.* The authorized official must ensure that disputes between Reclamation and the concessionaire, as a result of reviews and recommendations, be resolved through informal negotiations and discussions. In the event that such disputes fail to reach resolution, a request must be made by Reclamation or the concessionaire to initiate a non-binding arbitration. Each party selects one member for the arbitration panel and, together, these two members will select the third (neutral) panel member. The panel will treat each party equally and fairly. Recommendations must be made by a majority of the panel members. If either party disagrees with the arbiter’s recommendation, that party must file an appeal with the Secretary of the Department of the Interior under 43 CFR Part 4, Subpart G. The Secretary’s determination is final and binding.

7. *Miscellaneous.*

A. *RFP and Contract Review.* All direct managed RFPs, concession prospectuses, and contracts must be reviewed and approved by Reclamation’s Dam Safety and Infrastructure Office. The following sequence of steps must be followed:

(1) The authorized official must submit the proposed contract and RFP along with supporting information to the Dam Safety and Infrastructure Office. The
supporting information must include the appropriate planning documentation and FFE.

(2) The Dam Safety and Infrastructure Office will establish a review team appropriately suited to the complexity and scope of the contract and RFP. The team will evaluate the contract and RFP for sufficiency and compliance with the LND P02 and D&S.

(3) The Dam Safety and Infrastructure Office will return the approved contract and RFP for modifications and resubmittal if necessary.

B. Training. The authorized official is responsible for ensuring that Reclamation’s regional and area office employees who oversee concessions receive training commensurate with their responsibilities. Possible types of training include but are not limited to: public health and safety, concessions management training, accessibility, etc.

C. Non-profit Organizations.

(1) All non-profit arrangements must be approved by the authorized official. The authorized official is responsible for review and approval of a non-profit organization activities if the organization operates within a concession or elsewhere on the Federal estate. Non-profit organizations will also be given very clear allowances and restrictions identifying the type of business they are authorized to conduct and the type of goods or services they provide. In certain circumstances, it is appropriate for non-profit organizations to sell goods or provide visitor services to meet Reclamation’s goals and objectives, as approved by the authorized official. The authorized official will ensure non-profit organizations are prohibited from providing items or services not specifically authorized.

(2) The authorized official will ensure that the non-profit organization will be responsible for maintaining its accounting system, and the system cannot be combined with the AFR submitted by a concessionaire.

D. Employment of Reclamation Personnel or Family Members. Reclamation employees or immediate family members (i.e., spouses and minor children of Reclamation employees) must not be owners, partners, board members, corporate officers, general managers, or employees of any business providing commercial services on the Federal estate, or have any financial interest in such a company. Ownership of stock shares traded in a recognized open market is not considered a financial interest under this D&S. Reclamation employees are further prohibited from using their public office for private or family gain.
A Reclamation employee involved in preparing specification formulation, contract award, or operational administering a concession will not participate in that activity if the employee or family member is involved in any phase or operation of that concession. Any Reclamation employee responsible for any phase of a concession contract will be excused from duties related to the contract if the employee or family member is involved in the competition for the contract or the Reclamation employee or a family member is to benefit financially from the award of the contract.

8. Definitions.

A. Authorized Official. Regional Directors or their delegates as referenced in the RM Delegations of Authority, sections 3.D. and 4.K.(1).

B. Concession. A concession is a non-government commercial business that supports appropriate public recreation uses by providing facilities, and/or goods and services from which revenues are collected by the entity contracted to provide the operations. A concession involves the use of the Federal estate and sometimes involves the development of real property improvements. A concession is most often a commercial, for-profit entity but can also be a non-profit entity.

C. Federal Estate. The Federal land and water areas under the primary jurisdiction of the Department of the Interior, Bureau of Reclamation.

D. Fixed Assets. Fixed assets are any structures, fixtures, or capital improvements permanently attached to the Federal estate.

E. Gross Revenues. The total amount received or realized by, or accruing to the concessionaire from all sales for cash or credit of services, accommodations, materials, and other merchandise made pursuant to the rights granted by the concession contract; commissions earned on contracts or agreements with other persons or companies operating in the area, and gross revenues earned from electronic media sales. Excluded as gross revenues are:

(1) intra-company earnings on account of charges to other departments of the operation such as laundry;

(2) charges for employee meals, lodging, and transportation,

(3) cash discounts on purchases,

(4) cash discounts on sales,

(5) interest on money loaned or in bank accounts,
(6) income from investments,

(7) sale of property that was acquired for the purpose of resale and not for use under the concession contract,

(8) income from any subsidiary companies not arising from business conducted in conjunction with the concession contract,

(9) sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, transient occupancy taxes, fishing license fees, and postages stamps, provided that the amount excluded shall not exceed the amount due or paid Government agencies.

(10) all revenue received by the concessionaire from coin operated devices whether provided by the concessionaire or by others.

(11) all revenues received by the concessionaire from charges for in-room telephone or computer access.

F. **Improvement.** An addition to real property that increases its value or utility or that enhances its appearance. Refer to RM, D&S, *General Property, Plant, and Equipment*, FIN 07-20 for proper capitalization of assets acquired by the United States.

G. **Incidental Revenues.** Incidental revenues are generally defined as those revenues generated from the use of Reclamation’s project lands and facilities that are incidental to authorized project purposes. Although recreation and concession facilities are authorized project purposes, it has been determined that revenues generated from the use of the Federal estate by concessionaires are to be credited as incidental revenues.

H. **Total Benefits to the Government.** Total benefits include:

1. **Revenues retained.** RM D&S, *Federal Lands Recreation Enhancement Act (REA) Program Management*, LND 01-02, addresses revenues that are to be retained pursuant to this authority as a designated REA recreation site. Revenues that are not designated as REA sites or are generated at recreation areas without a project specific authority is subject to section 8.I.(2) immediately below.

2. **Direct Returns.** These are revenues generated by authorized concession contracts and paid directly to the United States Treasury and credited in accordance with RM, *Crediting of Incidental Revenues* (PEC 03-01).
(3) **Direct benefits.** These are fees paid into a contractually designated special account for resource and capital improvements that directly benefit the public in the area of operations where the fees are collected.

(4) **Indirect Benefits.** These are services or improvements to the Federal estate performed by the concessionaire that indirectly benefit the public.

I. **Market Value.** The amount in cash or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal. All government appraisals shall conform to the Uniform Appraisal Standards for Federal Land Acquisitions, as implemented in accordance with the Department’s Appraisal and Valuation Services Office.

J. **Non-Profit Organization.** A group organized for purposes other than generating profit and in which no part of the organization’s income is distributed to its members, directors, or officers. Non-profit organizations must be designated as non-profit when created and may only pursue purposes permitted by statutes for non-profit organizations. Examples of non-profit organizations include churches, public schools, public charities, public clinics and hospitals, political organizations, legal aid societies, volunteer services organizations, labor unions, professional associations, research institutes, museums, and some governmental agencies.

K. **Private Exclusive Recreational or Residential Uses.** Any use that involves structures or other improvements used for recreational or residential purposes to the exclusion of public uses and are not associated with the official management of a Reclamation project. This includes those uses described in 43 CFR part 429 and the uses currently defined in 43 CFR part 21.

9. **Review Period.** The originating office will review this release once every 4 years.
Attachment 1: Contract Clause

MINIMUM WAGES UNDER EXECUTIVE ORDER 13658 (JANUARY 2015)

(a) Definitions. As used in this clause—

“United States” means the 50 states and the District of Columbia.

“Worker”—

(1) Means any person engaged in performing work on, or in connection with, a contract covered by Executive Order 13658, and

(i) Whose wages under such contract are governed by the Fair Labor Standards Act (29 U.S.C. chapter 8), the Service Contract Labor Standards statute (41 U.S.C. chapter 67), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV),

(ii) Other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541,

(iii) Regardless of the contractual relationship alleged to exist between the individual and the employer.

(2) Includes workers performing on, or in connection with, the contract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c).

(3) Also includes any person working on, or in connection with, the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(b) Executive Order Minimum Wage rate. (1) The Contractor shall pay to workers, while performing in the United States, and performing on, or in connection with, this contract, a minimum hourly wage rate of $10.10 per hour beginning January 1, 2015.

(2) The Contractor shall adjust the minimum wage paid, if necessary, beginning January 1, 2015 and annually thereafter, to meet the Secretary of Labor's annual E.O. minimum wage. The Administrator of the Department of Labor's Wage and Hour Division (the Administrator) will publish annual determinations in the Federal Register no later than 90 days before the effective date of the new E.O. minimum wage rate. The Administrator will also publish the applicable E.O. minimum wage on www.wdol.gov (or any successor Web site) and on all wage determinations issued under the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute. The applicable published E.O. minimum wage is incorporated by reference into this contract.
(3)(i) The Contractor may request a price adjustment only after the effective date of the new annual E.O. minimum wage determination. Prices will be adjusted only if labor costs increase as a result of an increase in the annual E.O. minimum wage, and for associated labor costs and relevant subcontract costs. Associated labor costs shall include increases or decreases that result from changes in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(ii) Subcontractors may be entitled to adjustments due to the new minimum wage, pursuant to paragraph (b)(2). Contractors shall consider any subcontractor requests for such price adjustment.

(iii) The Contracting Officer will not adjust the contract price under this clause for any costs other than those identified in paragraph (b)(3)(i) of this clause, and will not provide duplicate price adjustments with any price adjustment under clauses implementing the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute.

(4) The Contractor warrants that the prices in this contract do not include allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(5) A pay period under this clause may not be longer than semi-monthly, but may be shorter to comply with any applicable law or other requirement under this contract establishing a shorter pay period. Workers shall be paid no later than one pay period following the end of the regular pay period in which such wages were earned or accrued.

(6) The Contractor shall pay, unconditionally to each worker, all wages due free and clear without subsequent rebate or kickback. The Contractor may make deductions that reduce a worker's wages below the E.O. minimum wage rate only if done in accordance with 29 CFR 10.23, Deductions.

(7) The Contractor shall not discharge any part of its minimum wage obligation under this clause by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Labor Standards statute, the cash equivalent thereof.

(8) Nothing in this clause shall excuse the Contractor from compliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the E.O. minimum wage. However, wage increases under such other laws or municipal ordinances are not subject to price adjustment under this subpart.

(9) The Contractor shall pay the E.O. minimum wage rate whenever it is higher than any applicable collective bargaining agreement(s) wage rate.
(10) The Contractor shall follow the policies and procedures in 29 CFR 10.24(b) and 10.28 for treatment of workers engaged in an occupation in which they customarily and regularly receive more than $30 a month in tips.

(c)(1) This clause applies to workers as defined in paragraph (a). As provided in that definition—

(i) Workers are covered regardless of the contractual relationship alleged to exist between the contractor or subcontractor and the worker;

(ii) Workers with disabilities whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c) are covered; and

(iii) Workers who are registered in a bona fide apprenticeship program or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are covered.

(2) This clause does not apply to—

(i) Fair Labor Standards Act (FLSA)-covered individuals performing in connection with contracts covered by the E.O., i.e. those individuals who perform duties necessary to the performance of the contract, but who are not directly engaged in performing the specific work called for by the contract, and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts;

(ii) Individuals exempted from the minimum wage requirements of the FLSA under 29 U.S.C. 213(a) and 214(a) and (b), unless otherwise covered by the Service Contract Labor Standards statute, or the Wage Rate Requirements (Construction) statute. These individuals include but are not limited to—

(A) Learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(e).

(B) Students whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(b).

(C) Those employed in a bona fide executive, administrative, or professional capacity (29 U.S.C. 213(a)(1) and 29 CFR part 541).

(d) Notice. The Contractor shall notify all workers performing work on, or in connection with, this contract of the applicable E.O. minimum wage rate under this clause. With respect to workers covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, the Contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers whose wages are governed by the FLSA, the Contractor shall post notice,
utilizing the poster provided by the Administrator, which can be obtained at www.dol.gov/whd/govcontracts, in a prominent and accessible place at the worksite. Contractors that customarily post notices to workers electronically may post the notice electronically provided the electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

(e) Payroll Records. (1) The Contractor shall make and maintain records, for three years after completion of the work, containing the following information for each worker:

(i) Name, address, and social security number;

(ii) The worker's occupation(s) or classification(s);

(iii) The rate or rates of wages paid;

(iv) The number of daily and weekly hours worked by each worker;

(v) Any deductions made; and

(vi) Total wages paid.

(2) The Contractor shall make records pursuant to paragraph (e)(1) of this clause available for inspection and transcription by authorized representatives of the Administrator. The Contractor shall also make such records available upon request of the Contracting Officer.

(3) The Contractor shall make a copy of the contract available, as applicable, for inspection or transcription by authorized representatives of the Administrator.

(4) Failure to comply with this paragraph (e) shall be a violation of 29 CFR 10.26 and this contract. Upon direction of the Administrator or upon the Contracting Officer's own action, payment shall be withheld until such time as the noncompliance is corrected.

(5) Nothing in this clause limits or otherwise modifies the Contractor's payroll and recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, or any other applicable law.

(f) Access. The Contractor shall permit authorized representatives of the Administrator to conduct investigations, including interviewing workers at the worksite during normal working hours.

(g) Withholding. The Contracting Officer, upon his or her own action or upon written request of the Administrator, will withhold funds or cause funds to be withheld, from the Contractor under
this or any other Federal contract with the same Contractor, sufficient to pay workers the full amount of wages required by this clause.

(h) Disputes. Department of Labor has set forth in 29 CFR 10.51, Disputes concerning contractor compliance, the procedures for resolving disputes concerning a contractor's compliance with Department of Labor regulations at 29 CFR part 10. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. These disputes include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the Department of Labor, or the workers or their representatives.

(i) Antiretaliation. The Contractor shall not discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to compliance with the E.O. or this clause, or has testified or is about to testify in any such proceeding.

(j) Subcontractor compliance. The Contractor is responsible for subcontractor compliance with the requirements of this clause and may be held liable for unpaid wages due subcontractor workers.

(k) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (k) in all subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

(End of clause)
WORKER RIGHTS UNDER EXECUTIVE ORDER 13658
FEDERAL MINIMUM WAGE FOR CONTRACTORS

$10.60 PER HOUR
EFFECTIVE JANUARY 1, 2019 – DECEMBER 31, 2019

The law requires certain employers to display this poster where employees can readily see it.

MINIMUM WAGE

Executive Order 13658 (EO) requires that federal contractors pay workers performing work on or in connection with covered contracts at least $10.60 per hour beginning January 1, 2016, and (2) beginning January 1, 2019, and every year thereafter, an inflation-adjusted amount determined by the Secretary of Labor in accordance with the EO and appropriate regulations. The EO hourly minimum wage in effect from January 1, 2019 through December 31, 2019 is $10.60.

TIPS

Covered tipped employees must be paid a cash wage of at least $7.40 per hour effective January 1, 2019. If a worker’s tips combined with the required cash wage of at least $7.40 per hour paid by the contractor do not equal the EO hourly minimum wage for contractors, the contractor may increase the cash wage paid to make up the difference. Certain other conditions must also be met.

EXCLUSIONS

- Some workers who provide support “in connection with” covered contracts for less than 20 percent of their hours worked in a week, may not be entitled to the EO minimum wage.
- Certain full-time students, learners, and apprentices who are employed under subminimum wage certificates are not entitled to the EO minimum wage.
- Workers employed on contracts for seasonal recreational services or seasonal recreational equipment rental for the general public on federal lands, except when the workers are performing associated lodging and food services, are not entitled to the EO minimum wage.
- Certain other occupations and workers are also exempt from the EO.

ENFORCEMENT

The U.S. Department of Labor’s Wage and Hour Division (WHD) is responsible for enforcing the EO. WHD can answer questions, in person or by telephone, about your workplace rights and protections. We can investigate employers, recover wages to which workers may be entitled, and pursue appropriate sanctions against non-compliant contractors. All services are free and confidential. The law also prohibits discriminating against or discharging workers who file a complaint or participate in any proceeding under the EO. If you are unable to file a complaint in English, WHD will accept the complaint in any language. You can find your nearest WHD office at https://www.dol.gov/wd/locall.

ADDITIONAL INFORMATION

- The EO applies only to new federal construction and service contracts, as defined by the Secretary in the regulations.
- Workers with disabilities whose wages are governed by special certificates issued under section 14(g) of the Fair Labor Standards Act must also receive no less than the full EO minimum wage rate.
- Some state or local laws may provide greater worker protections; employers must comply with both.
- More information about the EO is available at: www.dol.gov/whd/快报/13658.

WAGE AND HOUR DIVISION
U.S. DEPARTMENT OF LABOR
EVALUATION OF PROPOSALS - REVIEW PANEL INSTRUCTIONS

A. REVIEW PANEL INSTRUCTIONS

The following points through Section A.8. (Housekeeping Notes) are intended to identify likely steps or things not to forget in establishing a review panel.

1. Objective

   a. The objective is to select a concessionaire whose overall proposal is in the best interest of the Government. The process for making that selection is intended to be fair to all offerors, relatively simple to implement, and also highly defensible in the event that the process or the decision is challenged.

   b. The evaluation panel should have at least three members. One member will be designated as the chair of the panel. There are cases where two people would be sufficient. An example of such a case is a small concession contract in which only one proposal is received. There should be no instance where only one person completes the necessary record. In some cases, the panel can conduct its business without meeting. This should be carefully considered because it limits important interactions that are part of the review process. Panel members must be Reclamation employees, preferably “subject matter experts” (e.g., environmental, financial, recreation, construction, and concession experts). While there may be instances where it is desirable to have outside parties such as financial or other expert consultants or other non-Federal employees participate in an evaluation of proposals by advising the panel members, they should be involved only in an advisory capacity and not be voting panel members.

   c. Try not to make prejudgments about any of the proposals. Your first read-through can easily give an impression that is different from your later analysis. It is better to remain impartial for as long as possible.

   d. The record of the evaluation is to include one separate evaluation document for each proposal and a separate summary of proposals memorandum describing how the proposals addressed the factors for consideration. The record is very important because it will be used to defend against any challenges by unsuccessful offerors.

   e. The decision process should seek to build a consensus. It is fine to keep individual notes to record your thoughts during the evaluation; however, your notes may contain private information that would not be appropriate to release to the public—either about the offeror or the proposal involved.
If a review evaluation is contested, such notes would be subject to exposure through the discovery process and the Freedom of Information Act. Therefore, to protect against your notes becoming public information, you should destroy them when you have completed the review process. All pertinent facts and opinions should be consolidated in the final analysis document for each proposal and a consensus reached regarding that document.

f. The evaluation of a proposal will eventually be available to the offeror involved. Be careful to represent the facts fully and carefully and to use good judgment in your comments and analysis.

g. The objective is to have an evaluation panel develop a single evaluation document for each proposal for consideration by the selecting official. To do this, the evaluation panel members will consolidate their thoughts through discussion and review each of the other members’ comments in a single, computer-based, evaluation document about each proposal. The evaluation document will include an evaluation sheet and an evaluation summary.

h. The offer should be evaluated based on the information submitted. Hearsay and opinions beyond the scope of the offer and any requested clarifications will not be considered by panel members in the evaluation process.

2. Opening the Proposals and First Review

The proposals must not be opened until after the due date. And then, all proposals must be opened at once. Make a written inventory of each item included in each proposal. Record a brief description of each item.

3. Reference Check and Evaluation of Financial Capability

Next, select one or more people to conduct telephone interviews with each offeror’s management, experience, and financial references and perform an evaluation of the credibility of each offeror’s financial capability. This should be started before the review panel is scheduled to meet, allowing enough time to perform the interviews and evaluations, recognizing that the references may not be available immediately. Except in the most simple instances, one of the members or consultants should be an individual with educational or practical experience that enables him or her to provide a financial analysis and review of the offer. This should be the case even if that individual is not a voting member of the panel. The reason is to be able to professionally support any decision that is based in whole or in part on the review of an offeror’s financial package.
4. **Panel Review**

Panel members should be given the prospectus no later than 2 weeks before the panel convening and should read and understand the prospectus and especially the proposal package. Panel members should be familiar with the prospectus before the panel convening.

a. Next, each panel member should read all the proposals that were received. The proposals should be read in two stages, once to obtain an overview and then again to perform the analysis.

b. The evaluation panel should then determine whether it considers any of the proposals to be clearly and without question nonresponsive. Such proposals would be those with gross errors, such as failing to provide material items requested in the prospectus. These proposals should be set aside and the specific reasons for concluding that they are unresponsive should be documented in the related evaluation document. All other proposals received on time should continue to be evaluated fully, even if there are questions regarding the degree of responsiveness in some areas.

c. A nonresponsive proposal is a proposal that is not submitted on time or fails to meet the terms and conditions outlined in the prospectus. Specifically, the prospectus will list a series of specific requirements that must be met for a proposal to be considered responsive. If a proposal does not comply with each, it will be considered nonresponsive. The evaluation panel should consult the Office of the Solicitor if the panel intends to consider a proposal to be nonresponsive.

5. **Detailed Examination and Documentation**

a. The proposals should be reviewed in detail and evaluated at this point. Each panel member will read through each criterion and question on the evaluation form and all the material presented in each proposal, correlating the criterion and questions. The evaluation document should be filled in with quotations, paraphrases, and summaries of the proposal that the reviewers feel are appropriate to portray each section of each proposal. This information will represent the key points made in each proposal. It is strongly advised that all this work be carried on electronically. This means that each member needs to have a computer work station or lap top available. An electronic process makes sharing, combining, and editing much simpler.

b. Each panel member will add his or her comments or analysis.

c. It is important to note separately each excerpt from the proposals and each comment about the proposals, indicating which is a proposal excerpt and which is a reviewer comment, and to reference the page number in the
proposal from which the excerpt was extracted and about which the comment was made. ALL EVALUATORS CAN BENEFIT FROM EACH OTHER’S WORK AND RESPOND TO ANY CHALLENGES.

d. After evaluating each criterion and after facts and comments have been collected, write a brief summary and judge the quality of the proposal’s response with respect to that particular criterion relative to the other proposals. Specifically, state whether the response showed that the offer should be considered as being SUPERIOR, GOOD, SATISFACTORY, or NOT SATISFACTORY. Note the particular strengths and weaknesses of the proposal. Document any failures to adequately address the criteria. With the evaluation summary block complete, add a copy of it to the collected summaries at the beginning of the evaluation document for inclusion in the summary of offers memorandum.

e. After the initial review by the first evaluator is completed, the proposal should be passed to at least one other evaluator for the same review. This will be easier if the initial review is done using a computer and the second is an edit of the first. With this approach, the second review builds on the computerized evaluation from the first review.

f. The second and any subsequent reviews should not be superficial. It is essential that a careful second opinion be generated as a check on the first review. Things that are missed, misread, or misinterpreted need to be caught in later reviews.

Assume the offeror will eventually read the review and will look for unfair or erroneous treatment. The second and subsequent reviewers may need to meet with the earlier reviewers to discuss points of difference as they arise.

g. It is also possible to do separate reviews and then merge them. This could be done in long hand or otherwise. This method is not recommended because it is inefficient. The final evaluation document for a proposal is the sum of the review work that each evaluator has done. There should be only one document containing the collected wisdom of all evaluators. Individual opinions should be reconciled into a single panel opinion of each proposal. The only exception may be to highlight a single opinion when it is a technical point from one of the panel’s subject matter experts (e.g., financial), and that is to indicate its validity.

h. This is a consensus process. If there is a problem between evaluators, a resolution should be worked out and the issue recorded, as it was resolved, in the evaluation document. At least two reviewers are necessary, but more are better. In selecting panel members, it is useful to pick people who can work as a team and who can talk through disagreements to mutually acceptable resolution. Individuals who cannot compromise and those who want others to do their thinking for them are not the most
effective choices. Being selected for a panel should not be considered as automatic because of an employee’s duties if he or she does not meet the team oriented profile.

i. Reviewers may organize their indepth analyses by subject or by individual criterion rather than by proposal. For example, two or more people may evaluate the financial section and another two or more may evaluate the managerial section, etc., as long as all panel members read the entirety of all the proposals and a minimum of two people give careful attention to each of a proposal’s parts. Reviewers should keep in mind that some criteria or questions could overlap with others in the way they are answered. If the answer is in the proposal, the reviewers must make a reasonable effort to find it. Being too focused on only some parts of any proposal can lead to mistakes.

j. Before performing the evaluation of the proposals, the evaluation panel should review the information obtained for the credit and reference checks.

k. A complete evaluation will have all of the facts and comments entered. A summary will then be written for each criterion, including a characterization of the Offeror’s response to the criterion as NOT SATISFACTORY, SATISFACTORY, GOOD, or SUPERIOR. The entire analysis should then be copied to the evaluation summary section at the front of the review evaluation document.

l. The evaluation panel should make every effort to evaluate proposals from the initial submissions of the offerors. Seeking clarification or additional information from offerors is not recommended and should be done only when absolutely necessary. If clarification of a proposal is sought from one offeror, clarifications must be sought from other offerors if their respective proposals are determined to require clarification. If an offeror is permitted to provide additional information, other offerors are to be granted the right to provide additional information of the same nature. Advice from the Office of the Solicitor should be sought if the evaluation panel wishes to seek clarification or additional information from an offeror. In general, making any contact with any offeror after proposals are submitted and before the evaluation and selection is announced is strongly discouraged.

m. Four of the criteria are qualitative. The fifth is quantitative (financial benefit to the Government). The fifth criteria will be evaluated strictly according to the proposed franchise fee—but only on the condition that all other financial benefits are equal. All other financial benefits will be equal if the prospectus was structured properly as described in (1) below. The franchise fees proposed by the different offerors should be easy to compare if the prospectus was structured properly, as described in (2) below.
(1) First, the only other financial benefit should be the offeror’s annual deposits into the RAIF. Those deposits should have been specified in the prospectus to be equal for all offerors either in terms of an annual dollar amount or as a percentage of gross receipts. If the latter, the prospectus should have also specified the future annual gross receipts and instructed all offerors to assume those gross receipts for the purpose of their proposals. Therefore, the annual RAIF deposits assumed and proposed in all proposals should be the same for all offerors. Each offeror should have agreed in writing in their proposal that they will implement the RAIF as specified in the prospectus.

(2) The prospectus will have allowed the proposed franchise fee to be expressed either as a single fixed percentage of gross receipts or as different percentages of gross receipts for different levels of gross receipts (a “tiered” or “graduated” franchise fee). In either case, the prospectus must have specified the future annual gross receipts and instructed all offerors to assume those gross receipts for the purpose of their proposals, which the offerors must have done. However, unless they assume the gross receipts specified, their offer cannot be objectively compared with other offers.

(3) When franchise fees are expressed as a single fixed percentage of gross receipts, the process of comparing and evaluating the franchise fees is straightforward. However, when franchise fees are expressed as a “tiered” or “graduated” franchise fee, the review panel should compare offers by applying the proposed franchise fee percentages for the respective offers to the gross receipts specified in the prospectus and assumed by each offeror. That process will yield a franchise fee value for each offeror that may be compared with the franchise fee values for other offerors.

6. Comparing the Offers and Documenting the Process: Summary of Proposals Memorandum

a. After all the proposals have been reviewed and documented, any proposals receiving a NOT SATISFACTORY rating for any of the criteria should be eliminated from further consideration. The justification for such a NOT SATISFACTORY rating must be carefully explained.

b. The summary of proposals memorandum should present the conclusions about each proposal. Provide very strong written justification for the scoring. The summary will begin with a numerical sum of the points for the five criteria and will be followed by a brief but warranted commentary justifying the ratings.
Reclamation Manual
Directives and Standards

7. Selection of Best Proposal

a. The prospectus, proposals, proposal evaluations, credit checks, and other reference check information should be included as attachments to the summary of proposals memorandum sent by the evaluation panel to the selecting official. This material provides the entirety of the information to support the selecting official’s decision. All the unofficial notes and tables compiled by the evaluation panel should be destroyed upon completion of the panel review.

b. The selecting official is to review the materials provided by the evaluation panel and confirm, upon application of the selection factors, the best proposal. The selecting official is also to review the conclusions of the evaluation panel of any proposal considered nonresponsive, that is, any offeror’s criterion that was given a NOT SATISFACTORY rating.

c. When the selecting official selects which is the best overall proposal, the reasoning for this decision must be documented. Usually, it will be enough for the selecting official to concur in writing with the reasoning in the summary of proposals memorandum. However, when appropriate, the selecting official should state in narrative form, upon application of selection factors, his or her reasoning for selecting the best overall proposal (or, if applicable, his or her reasoning for determining nonresponsiveness). The easiest way to write the narrative is to tell a story. That story must be compelling, convincing, and defensible.

d. In the event a responsive proposal from an offeror with a right of preference is not selected as the best proposal, such offeror must be notified in writing of the superior terms and conditions of the best proposal and be given a reasonable opportunity to amend its proposal to meet those superior terms and conditions. If the offeror with a right of renewal preference does so within the period of time allowed and the proposal, as amended, is determined by the selecting official to be substantially at least equal to the best proposal and the offeror is determined to be capable of carrying out the terms of the amended proposal, the offeror with a right of preference shall be selected for award of the concession contract upon the terms and conditions of its amended proposal.

e. The proper internal parties should be briefed and letters written promptly to all offerors announcing the selection and thanking the offerors for their participation. The individual evaluation of each proposal can be provided either at this time or sent later, if requested by the offeror.
8. **Housekeeping Notes**

a. The evaluation panel members are responsible for the products of the proposal evaluation process. However, if the matter is controversial, consider having a solicitor present throughout the process to help evaluate the legal technicalities that may arise. Remember, however, a solicitor cannot be expected to do your thinking for you or to ensure that you conduct a sound, business-like evaluation and leave a good document trail.

b. Ensure that the proposal items that need to be included in the final concession contract are identified (e.g., the proposed franchise fee, the risk, the environmental management programs, and the additions or changes to the maintenance and operating plans). The proposal will be of little use if it is not reflected in the very concession contract that will guide future operation of the concession during the new contract term.

c. The panel should critique the process used. Improvements should be recommended for incorporation in future evaluations.

d. Establish what is needed to form the record of the decision making process. The prospectus, all proposals, the individual proposal evaluation documents, the summary of proposals memorandum, and credit and reference reviews should be included. Draft materials, notes, or other preliminary or review information should not be retained. Destroy all material considered unnecessary to summarize and validate the review and conclusions, including computer files.

e. The instructions set forth above do not preclude establishing additional levels of review, such as a selection panel to assess the results of the evaluation panel. Appropriate procedures should be developed to integrate evaluation responsibilities in such circumstances.
B. **Evaluation Documents**

This is the basic evaluation document. It has two parts. The first part, the evaluation sheet, includes the name and address of the offeror being evaluated, the names and titles of the panel members doing the review, a description of the evaluation procedure used, and a summary of the results for the proposals evaluated.

The second part is the evaluation summary and should be an abbreviated form of the proposal format used in the prospectus. The offerors should organize their proposal in the format of the proposal package. That will enable the Reclamation review panel to review and compare each proposal more easily, systematically, and thoroughly.

All evaluation panel members should collectively prepare one evaluation document for each proposal received, based on a compilation of the panel members' individual evaluations. The evaluation summary at the front of the evaluation document should be completed for each proposal. This evaluation, once completed, should be complete with respect to all the factors evaluated and conclusions drawn about that proposal. It should be written with the understanding that it may be provided to each offeror and to congressional staff inquiring on behalf of a constituent or the offeror. Note, however, that some of the information contained in the evaluation document will be confidential. Therefore, the evaluation document may not be made generally available to anyone. These forms should be made available to panel members in an electronic format for ease and efficiency of completion by multiple members.
1. Evaluation Sheet

Date of evaluation: ____________________________

Full name of offeror: ____________________________

Address of offeror: ____________________________

Telephone number of offeror: ____________________________

FAX number of offeror: ____________________________

Proposal was signed by: ____________________________

Title: ____________________________

Chairman of the Board/President/Chief Executive Officer

Signed by Proposal on behalf of: ____________________________

Corporation Name: ____________________________

Evaluation Panel

Chair: ____________________________

Mr./Ms.

Title: ____________________________

Location: ____________________________

Mr./Ms.

Title: ____________________________

Location: ____________________________

Mr./Ms.

Title: ____________________________

Location: ____________________________

Mr./Ms.

Title: ____________________________

Location: ____________________________

Mr./Ms.

Title: ____________________________

Consultants: ____________________________

Mr./Ms.

Title: Solicitor, Office of the Solicitor, Department of the Interior,

Washington, DC

Mr./Ms.

Consultant Title: ____________________________

Mr./Ms.

Consultant Title: ____________________________

Mr./Ms.

Consultant Title: ____________________________

Mr./Ms.

Consultant Title: ____________________________
2. Method of Evaluating Proposals – Principal Factors

Concessionaires are selected through an evaluation of the criteria specified, including:

a. Responsiveness of the proposal to the objectives of preserving and protecting the resources of the area.

b. Responsiveness of the proposal to the objectives of providing high quality visitor services.

c. Experience and background of the offeror, including the management expertise and past performance of the offeror relevant to providing the same or similar visitor services as those specified in the concession contract.

d. The offeror’s understanding of the financial needs of the business and the financial capability to meet the necessary financial obligations.

e. Financial benefit to the Government.

Upon consideration of each offeror’s proposal with respect to each of these criteria, Reclamation selects for award of the concession contract the offeror that submitted the best proposal on an overall basis.

In documenting the evaluation of proposals, the evaluators, under the appropriate criteria and questions, paraphrase or quote the response made by the offeror. These factual statements, including page number references to the proposal to facilitate future reference, are indented and blocked from the left margin. Comments or analyses or other evaluations of the offerors response are added to by evaluators in statements beginning against the left margin and preceded by three asterisks (***) At the end of each criterion, there is an evaluation summary of the response.

3. Evaluation Summary

Overall Rating:  (Superior, Good, Satisfactory, or Not Satisfactory)

Summary: (A brief summary of the reasons for the rating will follow, preferably in narrative form.)

The summary evaluations for each individual criterion are duplicated in the evaluation summary section of this evaluation. “Not Satisfactory” means that the offeror failed to satisfy the requirements of the criteria. “Satisfactory” means that the offeror’s response was acceptable and met the basic criteria. “Good” means that the Proposal was better than satisfactory because it exceeded some of the basic criteria. And “Superior” means the proposal exceeds all the basic criteria.
It is necessary for a proposal to achieve a satisfactory or better rating on each of the criteria to be an acceptable proposal.

4. **Summary of Proposals Memorandum**

After the review, briefly describe how thoroughly the proposals addressed the factors under consideration in a summary of proposals memorandum. Attach the memorandum to the beginning of the compilation of the individual proposal evaluation summaries. The memorandum is then given to the selecting official who is asked to make the final selection decision.

It is possible for proposals to be roughly equal overall but to have different strengths and weaknesses. The evaluation panel and the selecting official should make every effort to make distinctions between proposals with respect to each criterion.
Reclamation’s Recreation Related Authorities
(not all inclusive)

1. **Reclamation-wide Recreation-Related Laws.**
   A. Reclamation Act of 1902 (43 USC 391 et seq.), as amended and supplemented
   B. Reclamation Project Act of 1939 (43 USC 485 et seq.)
   C. Federal Water Project Recreation Act of 1965 (Public Law 89-72; 16 USC 460l, et seq.), as amended
   D. Reclamation Development Act of 1974 (Public Law 93-493; 88 Stat. 1486, Title VI)
   E. Reclamation Recreation Management Act of 1992 (Public Law 102-575, Title XXVIII)

2. **Reclamation Project-Specific Authorities for Recreation.**
   A. Boulder Canyon Project Act of 1928 (43 USC 12A)
   B. Colorado River Storage Project (CRSP) Act of 1956 (Public Law 84-485; 70 Stat. 105)
   C. Fryingpan-Arkansas Act of 1962 (Public Law 87-590; 77 Stat. 393)
   D. Recreation Facilities, Elephant Butte and Caballo Reservoirs Act of 1962 (Public Law 87-542; 76 Stat. 171)
   E. Recreation Development, Sanford Reservoir Act of 1964 (Public Law 88-536; 78 Stat. 744)
   F. Auburn-Folsom South Unit, Central Valley Project, 1965 (Public Law 89-161; 79 Stat. 615)
   G. Colorado River Basin Project Act of 1968 (Public Law 90-537; 82 Stat. 885)
   H. Omnibus Consolidated Appropriations Act of 1998, (Public Law 105-277; 112 Stat. 2681, Title X (Canyon Ferry Reservoir, Montana))
   I. Law Enforcement Authority at Bureau of Reclamation of 2001, (Public Law 107-69; 115 Stat. 593)

3. **Other Laws that Apply to Reclamation’s Recreation Program.**
   A. Economy Act of 1932, as amended (Public Law 97-258 and 98-216; 31 USC 1535)
Reclamation’s Recreation Related Authorities
(not all inclusive)

B. Conservation of Wildlife, Fish and Game Act of 1934 (Public Law 73-121; 48 Stat. 401)

C. Fish and Wildlife Coordination Act of 1946 (Public Law 79-732; 60 Stat. 1080)

D. Water Resources Planning Act of 1965 (Public Law 89-80; 79 Stat. 244)


F. Architectural Barriers Act of 1968 (Public Law 90-480; 82 Stat.718; 42 USC 4151 et seq.)

G. Wild and Scenic Rivers Act of 1968 (Public Law 90-542; 82 Stat. 906)

H. Rehabilitation Act of 1973 (Public Law 93-112; 87 Stat. 355; 29 USC 701 et seq.), as amended

I. An Act to Authorize Acquisition or Use of Public Lands by States, Counties, or Municipalities for Recreational Purposes of 1984 (Public Law 98-552; 98 Stat. 282)


K. Omnibus Parks and Public Land Management Act of 1996 (Public Law 104-333; 110 Stat. 4093)

L. Department of the Interior and Related Agencies Appropriations Act of 2001 (Public Law 106-291; 114 Stat. 922, 996; 43 USC 1701)


N. John D. Dingell, Jr. Conservation, Management, and Recreation Act, 2019 (Public Law 116-9)
4. **Reclamation’s Recreation-Related Regulations.**

   A. Non-discrimination in Federally Assisted Programs of the Department of the Interior (43 CFR Part 17)

   B. Occupancy of Cabin Sites on Public Conservation and Recreation Areas (43 CFR Part 21)

   C. Off-Road Vehicle Use (43 CFR Part 420)

   D. Department of the Interior Fish and Wildlife Policy (43 CFR Part 24)

   E. Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies (43 CFR Part 423)

   F. Use of Bureau of Reclamation Land, Facilities, Waterbodies (43 CFR Part 429)

5. **Executive Orders.**


6. **Secretarial Orders.**

   A. Secretarial Order (SO) 3356, *Hunting, Fishing, Recreational Shooting, and Wildlife Conservation Opportunities and Coordination with States, Tribes, and Territories*, 2017

   B. SO 3366 *Increasing Recreation Opportunities on Lands and Waters Managed by the U.S. Department of the Interior*, 2018

   C. SO 3376, *Increasing Recreational Opportunities through the use of Electric Bikes*, 2019

7. **Reclamation Manual (RM) Policies.**

   A. *Public Civil Rights*, CRM P01

   B. *Concessions Management*, LND P02

   C. *Cultural Resources Management*, LND P01
Reclamation’s Recreation Related Authorities
(not all inclusive)

D. *Recreation Management*, LND P04

E. *Museum Property Management*, LND P05

F. *Land Program Management*, LND P06

G. *Incidental Revenues*, PEC 03

H. *Emergency Management*, SLE P08

8. **RM Directives and Standards (D&Sm).**

A. *Nondiscrimination on the Basis of Disability in Federally Conducted Programs, Activities, and Services (Accessibility Program)* (CRM 01-01)

B. *Review of Operation and Maintenance (RO&M) Program Examination of Associated Facilities (Facilities Other Than High and Significant Hazard Dams)* (FAC 01-04)

C. *Implementation of Cost Sharing Authorities for Recreation and Fish and Wildlife Enhancement Facilities* (LND 01-01)

D. *Recreation Program Management* (LND 01-03)

E. *Museum Property Management* (LND 02-02)

F. *Concessions Management by the Bureau of Reclamation* (LND 04-01)

G. *Concessions Management by the Non-Federal Partners* (LND 04-02)

H. *Land Use Authorizations* (LND 08-01)

I. *Crediting Requirements for Incidental Revenues* (PEC 03-01)