

Issue	NPHA proposal	Interior Proposed Rule	Garden	Van Ness Feldman
<p>36 C.F.R. § 51.76 May the Director include in a concession contract otherwise grant a concessioner a preferential right amend an existing concession contract to provide new or additional visitor services?</p>	<p>The Director may amend an existing concession contract to authorize the concessioner to provide new and additional visitor services or concession facilities, rather than issue a new concession contract, when the Director determines that the services or facilities are necessary and appropriate for public use and enjoyment of the unit of the National Park System in which they are located. These new and additional services and facilities may include, for example, services and facilities which assist with visitor transportation, are provided during periods where visitation is typically at lower levels or appeal to a broader spectrum of visitors or potential visitors.</p>	<p>(a) The Director may propose to amend the applicable terms of an existing concession contract to provide new and additional services where the Director determines the services are necessary and appropriate for public use and enjoyment of the unit of the National Park System in which they are located and are consistent to the highest practicable degree with the preservation and conservation of the resources and values of the unit. Such new and additional services shall not represent a material change to the required and authorized services as set forth in the applicable prospectus or contract.</p> <p>(b) Except as provided above or in subpart E of this part, the Director may not include a provision in a concession contract or otherwise grant a concessioner a preferential right to provide new or additional visitor services beyond those already provided by the concessioner under the terms of a concession contract.</p>	<p>NPS largely accepted NPHA’s proposal to establish procedures to create new concession operations as well as new services under existing contracts. NPS did not, however, agree to give a preference to those who submitted a new idea.</p> <p>Adding new services to existing contracts (§51.76): NPS agreed with NPHA’s proposal to add regulatory language explicitly authorizing the agency to amend existing contracts by adding “new and additional services” as long as they are not a material change to the original contract’s scope. (NPS also reiterated this authority in its proposed changes to § 51.4(g).) NPHA may want to suggest the regulation state “new or [rather than “and”] additional” services to ensure the amendment could include either.</p>	<p>Planning for new concession opportunities. The proposed rule would add new provisions to recognize NPS planning to address evolving visitor needs, such as wi-fi, through new commercial services not provided under current concession contracts. These provisions would require NPS to establish procedures for soliciting and considering suggestions from the public; set forth the standard and relevant criteria to be applied by NPS in evaluating new opportunities; clarify that suggesting a new service does not provide any preference to the entity that submitted the suggestion; and preserve NPS’s authority to amend an existing contract to provide new or additional services in certain circumstances.</p> <p>New or Additional Services. The proposed rule would align the regulations with language in the NPS Centennial Act, which gives NPS the authority to amend an existing contract to provide new and additional services if those services do not represent a material change to the required and authorized services under the contract. This change, which NPS says could “provide new opportunities to enhance commercial services under</p>

				existing contracts allowing concessioners to meet changing visitor needs where appropriate,” would apply to both existing and future concession contracts.
Encouragement of Proposals for Entirely New Concession Operations Where None Existed Before	<p>How will the Director determine when to issue a prospectus for a new concession opportunity where no prior concession services had been provided?</p> <p>In order to ensure the Director is meeting the statutory requirement to promote the use and enjoyment of the National Park System, the Director shall establish a process for suggesting new and appropriate visitor services within units of the National Park System where the absence of food, lodging, transportation, retail and other services are a deterrent to visitation and/or the economic stability of nearby communities. The Director shall identify necessary components of and annual deadlines for receipt of these suggestions. Up to ten suggestions shall be selected annually for review and</p>	<p>(b) Except as provided under § 51.47 (which calls for a final administrative decision on preferred offeror appeals prior to the selection of the best proposal) the terms, conditions and determinations of the prospectus and the terms and conditions of the proposed concession contract as described in the prospectus, including, without limitation, its minimum franchise fee, are not final until the concession contract is awarded.</p> <p>(c) The Director will issue a prospectus for a new concession opportunity when the Director determines, in the Director’s discretion, that a new concession opportunity in a System unit is necessary and appropriate for public use and enjoyment of the System unit and is consistent to the highest practicable degree with the preservation and conservation of the resources and values of the unit.</p> <p>(d) The Director will establish procedures to solicit and consider suggestions for new concession opportunities within units of the National Park System from the public</p>		

	<p>response. If the suggestion is accepted, the Director may issue a prospectus and provide appropriate consideration for the suggesting entity in the selection process</p>	<p>(including from potential concessioners) as part of the System's planning processes for such opportunities. (e) In determining whether suggested concession opportunities are necessary and appropriate and whether to issue a prospectus for a concession contract to provide such opportunities, the Director will consider factors including whether the suggested concession opportunities are already being adequately provided within the System unit or the communities located near the System unit; the feasibility of the suggestions; the compatibility of the suggestions with governing law and policy; the innovative quality of the suggestions; and the potential impacts of the suggestions on visitation and on the economic wellbeing of communities located near System units. (f) No preference to a concession contract shall be granted to a party based on that party's having submitted, or failed to submit, a suggestion described in this section. (g) The Director may consider suggestions for new services as additional services to be provided through an existing concession contract as described in § 51.76. (h) Nothing in this section shall constrain the discretion of the Director to solicit or consider suggestions for new concession</p>		
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