United States Department of the Interior
NATIONAL PARK SERVICE
1849 C Street, N.W.
Washington, D.C. 20240

IN REPLY REFER TO:
(2410)

Memorandum

To: Regional Directors

From: Associate Director, Business Services

Subject: Guidelines for Use of Concession 80 Percent Franchise Fees

The purpose of this memorandum is to update and consolidate previous criteria, guidance and procedures, and to define the priority use of 80 percent concessioner franchise fees, as provided for in Public Law 105-391. This memorandum supersedes the September 23, 1999, memorandum " Guidelines for Use of Concessioner 80 Percent Franchise Fees" and the December 16, 2003, memorandum "80 Percent Concession Franchise Fees."

Priority for use of concession 80 percent franchise fees is broken down into five categories, as defined below. These guidelines must be followed in order and all needs must be met in a category before funds may be spent in the next category. For example, funding for projects under category four will not be approved until all funding needs are met in categories one, two and three.

Category 1. The first priority for the use of 80 percent funds is concession prospectus and contract development.

This may include:

- Outsourcing for the required industry expertise to complete market analysis, personal property valuation, comparability studies, financial analysis, condition assessments, capital improvement plans, commercial services plans, etc.
- Travel and other expenses for in-house execution of due diligence steps such as those listed above.
- Reviewing offers (e.g. evaluation panels).

Category 2. The second priority for the use of 80 percent funds is the buy-out of possessory or leasehold surrender interest (in part or in whole) if such buy-out is in the best interest of the park's financial obligations, including the obligation to structure future contracts to encourage healthy competition among offerors.

Possessory Interest (PI) and Leasehold Surrender Interest (LSI) are contractual liabilities that represent compensation due to concessioners in accordance with its concession contract, for certain construction, repairs and fixture replacements (consulteach individual contract for the precise definition). By law, concession opportunities must provide concessioners with a reasonable opportunity for profit. When PI/LSI obligations are too high, the draft contract may not provide a reasonable opportunity for a profit, and the contract is not feasible for non-incumbent offerors unless the National Park Service (NPS) buys down some of the PI/LSI obligation.

The memorandum entitled "Guidance for Requesting 20 Percent Concession Franchise Fees for Payment of Possessory Interest (PI) or Leasehold Surrender Interest (LSI) dated November 9, 2012, established policy requiring parks to exhaust all possible park and regional fund sources, including 80 percent franchise fee funds, before requesting national 20 percent franchise fee funds.

Category 3. The third priority for the use of 80 percent funds is concessions-related needs.

Concessions-related needs include high priority concession facility improvements, including fixture replacement, the backlog of capital projects, rehabilitation, and related infrastructure needs such as retrofits for accessibility and structural fire protection unless t hose needs are the responsibility of the concessioner. Other concession-related needs include training and travel, facility and condition surveys, managing concessioner construction projects, construction supervision, and developing commercial use strategies and plans, including determinations of "necessary and appropriate." Temporary or term positions that are directly related to concessions management may be funded through this source.

Category 4. Remaining 80 percent funds should be used for non-recurring high priority and urgently necessary visitor services and resource management programs.

Projects could include environmental compliance (such as water and waste water treatment), energy conservation (such as energy efficiency and renewable technologies), accessibility, sustainable design and construction and seismic enhancements (relating to structures).

The high-priority resource management programs should be non-recurring projects identified in an approved Resource Management Plan. Proposed projects should demonstrate resource improvement (e.g., stabilization and rehabilitation of cultural landscapes) or resource understanding (e.g., through non-recurring inventory monitoring evaluations and natural resource condition assessments).

Projects in this category will only be considered for approval if all funding needs in the previous categories have been met and there are no outstanding concessions-related funding needs.

Category 5. Remaining funds may be used for recurring park operations.

Projects for recurring park operations, including funding seasonal or other temporary positions, interpretation and education, non-concession related construction and maintenance, law enforcement, natural and cultural resources, etc., will only be considered for approval if all funding needs in the previous categories have been met and there are no outstanding concessions-related funding needs.

80 percent funds may not be used for the following purposes:

Under no circumstances may a park use 80 percent funds to maintain, repair, or improve any property in which a concessioner has PI or LSI under the terms of its concession contract.

Moreover, 80 percent funds are not to be used for any expenses that the concessioner has contractual responsibility to cover. Concessioner revenue enhancing projects may not be funded.

A park may not use 80 percent franchise fees to fund permanent positions except as outlined in the October 2014, memorandum titled "Guidelines for Use of Concessioner 80 Percent Franchise Fees to Fund Permanent Positions."

Any deviations from the above policy guidance will require written approval of the Associate Director, Business Services.

If you have any questions, please contact Tara Riggs, Finance Branch Chief, Commercial Services Program, at 303-987-6905 or tara riggs@nps.gov.