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: Deputy Director, Management and Administration ***/s/ Lena McDowall***

Subject: Surety Bond in Lieu of Contractual Deductible Requirement

A surety bond may be provided by a concessioner to secure the difference between the deductible amounts stated in the insurance requirements exhibit of the concessioner's contract and insurance obtained by the concessioner that has higher deductible amounts. Terms and conditions and procedures to amend contracts to exercise this option are provided below.

Background

A number of concessioners have indicated that they are unable to reasonably obtain certain insurance with deductibles that comply with those required by their contract because these deductibles are unavailable or very expensive in the insurance market for a company of their size. Furthermore, larger companies often operate under one or more contracts in multiple parks and commonly obtain insurance at a corporate-level covering all of their operations. As a result, the deductible shortfalls and resulting contract compliance impacts can apply over multiple contracts.

The National Park Service (NPS) consulted with its insurance expert and determined that we would allow a concessioner to procure a surety bond in lieu of meeting the contract-specified deductibles for one or more contracts as a means to guarantee that the concessioner would have adequate resources to cover a loss if one were to occur. The single surety bond would cover the highest of all contract deductible shortfalls for all of the contracts to which the bond is applied.

Requirements

1. A surety bond will be considered as an acceptable means of security for those concessioners that have coverage that are first dollar, true deductible-based policies. It may also be used for self-insured retention-based policies in which the concessioner is a State qualified self-insured (i.e., workers compensation and/or automobile liability exposure). It may not be used for other self-insured retention-based policies which do not have such a qualification.

2. All requests for use of a surety bond by a concessioner for this purpose must be approved by the Associate Director, Business Services or Deputy Director, Management and Administration. Requests will be submitted to the Chief, Commercial Services Program,

who will recommend or not recommend approval. Commercial Services will utilize its insurance consultant to help independently assess each request giving consideration to the proposed bond form, size of the concessioner, limit of the proposed deductible and line of coverage it's intended to support.

3. A sample bond form is available to use as a concessioner resource. Bond forms other than the sample may be found acceptable. All bond forms must contain "payment demand" and "non-renewal/replacement" clauses as highlighted in the sample.

4. Approval to use the surety bond option should be made prior to obtaining the insurance that does not meet the deductible amounts specified in the contract. A concessioner that is not in compliance with insurance deductible requirements before a surety bond is approved and in place is deficient with the insurance administrative compliance requirement. This deficiency should be reflected in the concessioner's annual overall rating.

5. Approval to use the surety bond option is contingent upon the concessioner's compliance at the time of request, with all contractual insurance requirements for all contracts for which the bond will apply, except the requirement related to the deductible amounts.

6. Approval is also contingent on the concessioner's agreement to complete mutually agreed upon improvements to the visitor services above those required under the terms of its contract(s). We assume a concessioner will pay for the full insurance required and we base our franchise fee on that level of expenditure. This condition of approval provides consideration to the Government to offset the savings the concessioner will enjoy through the use of the surety bond instead of meeting the originally agreed upon contract insurance requirement.

7. The use of a surety bond in lieu of meeting contractual insurance deductibles must be documented through an amendment to each contract for which the surety bond is being applied. Standard contract language modifying the insurance exhibit to the contract must be used for such amendments. The approval of using a surety bond evidences the delegation of signature authority to execute such amendments (which involve a change to standard contract language) from the Associate Director, Business Services or Deputy Director, Management and Administration to the Regional Director.

Resources

A sample surety bond and template amendment to modify the concession contract can be found on the NPS Commercial Services SharePoint Site in the Concession Specialist Contract Management Toolkit. The sample surety bond is also available in the Concessioner Toolkit on the NPS Commercial Services website.

For Further Information

For additional information or to initiate an action to exercise the surety bond option for a concessioner, contact Debra Hecox, Chief, Planning and Development Branch, Commercial Services Program, at 303-987-6910 or Kurt Rausch, Chief, Contract Management Branch, Commercial Services Program, at 202-53-7202.