



## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 52

[NPS-WASO-39268; PPWOBSADC0; PPMVSCS1Y.Y00000]

RIN 1024-AE47

### Visitor Experience Improvements Authority Contracts

**AGENCY:** National Park Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule implements the Visitor Experience Improvements Authority given to the National Park Service by Congress in Title VII of the National Park Service Centennial Act. This authority allows the National Park Service to award and administer commercial services contracts and related professional services contracts for the operation and expansion of commercial visitor facilities and visitor services programs in units of the National Park System.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

*Information collection requirements:* If you wish to comment on the information collection requirements in this final rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this final rule between 30 and 60 days after publication of this final rule in the *Federal Register*. Therefore, comments should be submitted to OMB by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:**

*Docket:* The comments received on the proposed rule and a related economic

analysis are available in the docket for this rulemaking. Visit

<https://www.regulations.gov/> and search for Docket ID: NPS-2022-0003.

*Information Collection Requirements:* Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting "Currently under Review - Open for Public Comments" or by using the search function. Please provide a copy of your comments to the NPS Information Collection Clearance Officer (ADIR-ICCO), 13461 Sunrise Valley Drive, (MS-244) Herndon, VA 20171 (mail); or [phadrea\\_ponds@nps.gov](mailto:phadrea_ponds@nps.gov) (email). Please include "1024-AE47" in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** Kurt Rausch, Chief of Commercial Services Program, National Park Service; (202) 513-7202; [kurt\\_rausch@nps.gov](mailto:kurt_rausch@nps.gov). For questions regarding the NPS's information collection request contact [phadrea\\_ponds@nps.gov](mailto:phadrea_ponds@nps.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background.**

*NPS Authorities to Contract for Commercial Visitor Services.*

The National Park Service (NPS) enters into concession contracts with persons and entities to provide commercial visitor services in over 100 units of the National Park System. Examples of such services include lodging, food, retail, marinas, transportation, and recreational activities. NPS concession contracts generate approximately \$1.8 billion per year in gross receipts, while returning approximately \$180 million in franchise fees to the NPS. What was commonly known as the National Park Service Concession Policies Act of 1965 (1965 Act), Public Law 89-249, provided the first comprehensive statutory authority for the NPS to issue concession contracts. Since the repeal of the 1965 Act, concession contracts have been awarded under the National Park Service Concessions

Management Improvement Act of 1998 (1998 Act), 54 U.S.C. 101911–101926. NPS regulations in 36 CFR part 51 govern the solicitation and award of concession contracts issued under the 1998 Act and the administration of concession contracts issued under the 1965 and 1998 Acts.

The National Park Service Centennial Act (Centennial Act), 54 U.S.C. 101931-101938, established the Visitor Experience Improvements Authority (VEIA) allowing the NPS to solicit, award, and administer commercial services contracts for the operation and expansion of commercial visitor facilities and visitor services programs in units of the National Park System. The VEIA supplements, but does not replace, the existing authority granted to the NPS in the 1998 Act to enter into concession contracts, or any other existing NPS authorities to provide commercial visitor services in units of the National Park System. The VEIA is also separate from authorities granted under the Office of Federal Procurement Policy Act and Federal Acquisition Regulations.

The VEIA established a revolving fund that the NPS can use for expenses necessary for the management, improvement, enhancement, operation, construction, and maintenance of commercial visitor services and facilities within the National Park System; and for the payment of possessory interest and leasehold surrender interest for concession contracts. Funds collected pursuant to contracts awarded under the VEIA will be credited to the revolving fund, and the NPS is authorized to transfer to the revolving fund, without reimbursement, any additional funds or revenue in connection with the functions carried out under the VEIA.

*Differences between VEIA and the Concession Contracts Authority.*

The VEIA is intended to provide additional tools to expand, modernize, and improve the condition of commercial facilities and visitor services using contracting models that differ from and are in addition to the concession contracts used under the 1998 Act. These models include management agreements and percentage lease

agreements found in the private hospitality industry, as well as other contract models that are consistent with the VEIA. There are differences in the revenue management and fee structure for contract models that may be used under the VEIA, as discussed below.

These models may be used to provide a variety of commercial visitor services such as lodging, food, retail, marinas, transportation, camping, and recreational activities. The use of industry-standard models and industry-aligned contract terms may allow and encourage additional companies to bid on hospitality business opportunities in System units, thereby enhancing the visitor experience both at the particular System unit and across the System.

Under a management agreement, the NPS would own the assets and proceeds of the business. The operator would provide staff and expertise to run the business in exchange for the NPS paying the operator a base fee plus an incentive fee. The NPS would authorize the operator to use available funds and revenue for operations (e.g., property maintenance, the purchase of supplies, furniture, and other personal property) and improvements (e.g., facility upgrades and repairs). Any financial return beyond what is needed for the business would be credited to the revolving fund.

Under a percentage lease agreement, the operator would retain the revenue and pay a fee to the NPS. This would be similar to the concession contract model, although the fee structure under a percentage lease agreement would include payment of a base fee plus a percentage of revenue. Fees collected would be credited to the revolving fund.

The VEIA also provides flexibility in the solicitation process. For example, the 1998 Act requires the NPS to consider specific evaluation factors, while the VEIA does not dictate any specific evaluation factors. This flexibility may allow businesses to more effectively respond to and be evaluated on how they will meet visitor needs for the services being offered. The flexibility of the VEIA also provides the potential to streamline the solicitation process to reduce the burden on businesses submitting

proposals, including the ability to negotiate on the terms of the contract and greater ability to modify or adjust operations under existing contracts to reflect changes at the System unit or different visitor expectations during the contract term.

In addition to commercial services contracts, the VEIA authorizes the NPS to enter into professional services contracts related to those commercial services contracts. These may include consulting contracts with hospitality and asset management experts for services such as developing requests for proposals, condition assessments, and operational and financial analysis.

#### *Implementation of the VEIA.*

The Centennial Act requires the NPS to promulgate regulations appropriate for implementation of the VEIA. 54 U.S.C. 101936. The Centennial Act also states that the VEIA expires seven years after the enactment of the law. 54 U.S.C. 101938. The Consolidated Appropriations Act, 2023 (Pub. L. 117-328) extended the expiration of the VEIA by an additional two years until December 16, 2025. The NPS has consulted with hospitality industry experts, including academic leaders, hospitality asset management companies, hotel owners and operators, and State agencies to assess current visitor service contract models and best practices in the hospitality industry. The NPS engaged a nationally recognized hospitality management consulting and asset management firm to assist the NPS with developing contracts, requests for qualifications and proposals, and solicitation, contract management, and accounting practices.

The NPS has evaluated certain visitor services currently provided under concession contracts that may be suitable for commercial services contracts under the VEIA. The NPS used various criteria during this evaluation, including:

- Whether the services may be authorized under a commercial services contract under the VEIA (i.e., they may not be for the provision of outfitter and guide services, or for the provision of services for which the NPS has granted to an

existing concessioner a preferential right of renewal under the 1998 Act);

- Whether the contract is necessary and appropriate for public use and enjoyment of the System unit where the services will be provided and can be executed in a manner that is consistent with the preservation and conservation of the resources and values of the unit;
- Whether the operator can provide the visitor services in a manner that will expand, modernize, and improve the condition of commercial visitor facilities and the services provided to visitors;
- Whether the contract would be suitable considering the type, size, and complexity of the services to be provided;
- Whether the NPS can solicit the contract before the VEIA expires; and
- Whether the level of capital investment needed makes a commercial services contract under the VEIA feasible. For example, if significant capital improvements are needed for which Federal funds would be unavailable, it may be more appropriate for the NPS to use a concession contract that allows operators to make investments in exchange for leasehold surrender interest and can have a term that is longer than ten years. These characteristics of concession contracts allow the operator to recoup some value of their investment and have more time to generate a return on their investment.

During the public comment period for the proposed rule, the NPS received specific recommendations about how the VEIA should be used to expand, modernize, and improve commercial facilities and visitor services. Some commenters discussed the use of sustainable business practices related to renewable energy, water usage, and organic food sourcing. Other commenters made specific recommendations for updating campgrounds with modern, full-service amenities such as:

- Bathing facilities with hot showers, sinks, and flush toilets;

- Access to wi-fi throughout campsites;
- Outfitting campsites with site-specific hookups for EVs and electrical, water, and sewer services, as well as modern dump stations;
- Developing wider, longer campsites for modern RVs; and
- Developing more RV-accessible campsites to accommodate growing demand.

The NPS appreciates all the feedback it received about how it can implement the VEIA for the benefit of visitors. The NPS will look for opportunities to use the VEIA in a manner that enhances the visitor experience. This might include upgrades to campsites or other facilities such as marinas, hotels, restaurants, and retail stores. The NPS will provide information about implementation of the VEIA on the website for the NPS Commercial Services Program at <https://www.nps.gov/orgs/csp/index.htm>.

#### *Final Rule.*

The final rule includes requirements and limitations applicable to the VEIA that are directed by the Centennial Act. These requirements and limitations are promulgated in new 36 CFR part 52 and are explained below.

The NPS may only issue a commercial services contract under the VEIA if the Secretary of the Interior, acting through the NPS, determines that the contract will support expansion, modernization, and improvement of the condition of commercial visitor facilities and the services provided to visitors. Commercial services contracts issued by the NPS under the VEIA must meet two additional criteria. First, the contract must be necessary and appropriate for public use and enjoyment of the National Park System unit where it is located. Second, the contract must be consistent with the preservation and conservation of the resources and values of the unit. These two criteria also must be met for concession contracts.

The NPS may not award contracts under the VEIA for the provision of outfitter and guide services (as described in the 1998 Act), or to authorize the provision of

facilities or services for which it has granted an existing concessioner a preferential right of renewal under the 1998 Act. The NPS may award commercial services contracts under the VEIA without regard to Federal laws and regulations governing procurement by Federal agencies, except for those laws and regulations related to Federal Government contracts that govern working conditions and wage rates and any civil rights provisions otherwise applicable thereto.

The NPS must award VEIA commercial services contracts through a competitive selection process and must publicly solicit proposals for each contract before award. The NPS must prepare a request for proposals and publish notice of its availability. The NPS may not award a commercial services contract under the VEIA for a term greater than 10 years. The person or entity awarded a commercial services contract under the VEIA will not receive leasehold surrender interest in capital improvements (as those terms are defined by the 1998 Act at 54 U.S.C. 101915) completed during the term of the contract.

Other than these basic requirements, the VEIA authorizes the NPS to design a flexible process for the solicitation and evaluation of proposals. The NPS will adjust this process to reflect standard practices in hospitality and related industries, accounting for any necessary NPS-specific conditions. In addition to restating the statutory requirements governing the VEIA, the rule includes defined terms and other provisions that will govern the administration of contracts under the VEIA. These provisions explain solicitation, selection, and award procedures, including information about how the Director will publicly solicit proposals for a commercial services contract and how the Director will evaluate proposals. Other provisions govern the terms of the contracts themselves, including provisions related to termination, rate approval, assignments of contracts, and the management of funds. The final rule also addresses access to information and records held by operators related to their performance under commercial services contracts and by contractors related to their performance under professional services contracts.

*Summary of Public Comments.*

The NPS published a proposed rule in the Federal Register on January 25, 2022 (87 FR 3729). The NPS accepted public comments on the proposed rule through March 28, 2022, via the mail, hand delivery, and the Federal eRulemaking Portal at <https://www.regulations.gov>. The NPS received 14 comments on the proposed rule from individuals and organizations.

The concessioner community supported the general purpose of the VEIA and this rule, but raised questions about how the NPS will use the VEIA to complement rather than replace the existing concession contracting authority and asked for more details about implementation. Several commenters predicted that the use of contract models commonly used in the hospitality industry will generate substantial interest because they require less capital investment for operators, are familiar to operators, and provide greater flexibility. These commenters predicted that this will result in more competition and better visitor services. After considering public comments and additional review, the NPS made several substantive changes to the rule. First, the NPS added a new paragraph to § 52.4 restating the statutory limitations of the VEIA that it cannot be used for outfitter and guide services, or for the provision of facilities or services for which the NPS has granted to an existing concessioner a preferential right of renewal under the 1998 Act. Similarly, the NPS added language to § 52.14 restating several other statutory criteria which apply to VEIA contracts. Second, the NPS removed paragraph (a)(1) from §52.30. This paragraph explained a funding structure for commercial services contracts that was under consideration when the NPS published the proposed rule. The NPS has determined, however that this structure is not allowed under Federal law because it would give a private party direct access to funds in an account owned by the Federal Government. Third, § 52.41 has been updated to reflect the extended expiration date for the VEIA provided by Congress in the Consolidated Appropriations Act, 2023 (Public Law 117-

328). The NPS also added language to this section addressing the possibility that Congress will further extend the expiration date and clarifying that contracts awarded under the VEIA may continue beyond the VEIA expiration date, subject to the terms of the particular contract. Additionally, the NPS corrected a reference to the Comptroller General of the United States in § 52.36 and made several minor editorial changes to improve the clarity of the regulation and ensure consistency in terminology.

A summary of the pertinent issues raised in the comments and NPS responses are provided below.

*1. Comment:* Several commenters stated that commercial visitor services degrade the visitor experience and therefore should be prohibited in the National Park System.

*NPS Response:* The NPS has several statutory authorities to allow for commercial visitor services within System units, including the VEIA. Commercial visitor services that degrade the visitor experience are not authorized by the VEIA. Commercial services contracts must be necessary and appropriate for public use and enjoyment of the System unit, and consistent with the preservation and conservation of the resources and values of the System unit. The NPS will adhere to these requirements in the planning, solicitation, award, and management of commercial service contracts under the VEIA. Moreover, the VEIA revolving fund monies cannot be used to decrease the availability of services and programs to the public.

*2. Comment:* One commenter stated that the NPS should not use taxpayer funds to pay operators of businesses that provide visitor services in System units.

*NPS Response:* The VEIA authorizes the use of Federal taxpayer funds in furthering the VEIA's purposes, 54 U.S.C. 101935, but the NPS expects to rely primarily on proceeds from the provision of visitor services to accomplish VEIA's purposes. The NPS will conduct a detailed analysis before awarding a commercial visitor service contract under the VEIA to ensure that there is a reasonable business opportunity

considering revenue, expenses, and other factors. In most cases, rates charged to visitors for services will result in net positive cash flow over the term of the contract to cover operating expenses with no need for the NPS to use funds from other sources. In some circumstances, however, the NPS may need to transfer funds to the operator from the revolving fund to cover business expenses that are not adequately covered by the cash flow of the business. For example, under the management agreement model, the NPS may need to transfer funds to the operator so that it can purchase supplies and equipment to allow the business to begin and continue operations before adequate cash flows exist to cover such expenses. As another example, under both the management agreement and percentage lease agreement models, the NPS may need to transfer funds to the operator to pay for large capital improvements to or the rehabilitation of the federally-owned buildings or other assets the NPS has assigned for use by the operator. Examples of such needs are a roof replacement or repairing a building foundation. These needs may be identified prior to issuance of the contract through a condition assessment or may be unexpected and identified during the contract term. The NPS could directly fund and contract for such projects without involving the operator. In some circumstances, however, funding such projects through the operator is beneficial because the operator can more expediently and effectively coordinate projects around visitor service operations thereby reducing impacts to the visitor experience. In either case, it would be appropriate for the NPS to pay for these projects because it would be investing in Federal facilities that the Federal Government owns.

Under any of the circumstances described above, the funds provided to the operator could be paid from taxpayer or non-taxpayer revenue sources. One example of a non-taxpayer revenue source is concession franchise fees transferred to the revolving fund established under the VEIA.

3. *Comment:* One commenter suggested that the NPS not use the term "commercial services contract" when implementing the VEIA to avoid confusion with the terms "concession contract" and "commercial use authorization" that are used under separate authorities.

*NPS Response:* The NPS uses the term "commercial services contract" because that is the term used in the authorizing statute. See for example 54 U.S.C. 101931(a). Commercial services contracts awarded under the VEIA will clearly identify the statutory authority being used to award the contract to avoid confusion with other written instruments such as concession contracts or commercial use authorizations. The contracts themselves will be titled according to the applicable contract model, such as a management agreement or a percentage lease agreement. This will further distinguish commercial services contracts issued under the VEIA from concession contracts and commercial use authorizations.

4. *Comment:* One commenter expressed concern that under the VEIA the NPS might deposit Federal funds into a private bank account for use by the operator, potentially leading to misuse of those funds.

*NPS Response:* Under the management agreement model, the NPS may make transfers of funds from the Federal revolving fund to private bank accounts established and owned by the operator that the operator will use to run the business. These accounts may include an operating account and a capital improvement account. The NPS will take numerous measures to minimize the risk of fraud, waste, and abuse of Federal funds in this process, and ensure compliance with all applicable laws pertaining to the use of Federal funds. The terms of the management agreement will require that private accounts used by the operator are insured by the Federal Deposit Insurance Corporation, that the NPS holds a first lien on account balances, and that account funds will not be commingled with other funds of the operator. Operating and capital budgets will be

established and approved by the NPS. Expenses beyond approved operating and capital budgets will require written approval from NPS. Financial risk will be reduced further through monthly reporting requirements, NPS review of the operating and financial results of the business, independent annual audits of the operator's financial statements and controls, and (in some cases) ongoing review and support of business operations provided by a hospitality asset manager on behalf of the NPS.

*5. Comment:* One commenter noted that the rule does not state whether a percentage of the deposits in the revolving fund will be retained in the System unit where the visitor services are provided for the purposes of managing the commercial services contract and protecting visitors and resources.

*NPS Response:* Unlike the 1998 Act, which allows System units to retain up to 80% of franchise fees generated from concession contracts, the VEIA does not establish any specific allocations for funds collected under commercial services contracts. The NPS can use funds in the revolving fund for any expenses necessary for the management, improvement, enhancement, operation, construction, and maintenance of commercial visitor services and facilities that exist across the National Park System. The NPS will conduct annual planning to determine the appropriate level of funding that should be retained at the System unit where the funds were generated. Regardless of what percentage of funds are retained at the respective System unit, the NPS can take other actions to ensure that the operator's business activities are consistent with visitor and resource protection goals. When the NPS uses a management agreement model, it may award a related asset management contract. This contract would provide professional hospitality support services to help the NPS oversee the operator's performance, including ensuring the business activities are consistent with visitor and resource protection in the System unit.

6. *Comment:* One commenter recommended that the NPS address intellectual property associated with commercial operations authorized by the VEIA to protect the NPS from trademark disputes upon the expiration or termination of a contract.

*NPS Response:* To avoid disputes and protect NPS intellectual property, commercial service contracts will include provisions about rights to intellectual property, including trademarks, that are used by commercial service providers during the term of the contract. This will include provisions about the names of facilities used by operators.

7. *Comment:* One commenter stated the rule creates uncertainty for existing and potential commercial visitor service providers, as well as other stakeholders, in several areas, including the solicitation process and how the NPS will use funds in the revolving account. In general, these commenters asked the NPS to provide more detail about how it will implement the VEIA.

*NPS Response:* This rule omits details about implementation, such as solicitation and financial processes, in order to give the NPS flexibility as it develops and tests new contracting models that meet the goals of the VEIA. To the extent possible, the NPS will be consistent with hospitality industry contracting practices as it tests these models. For this reason, the solicitation processes and the structures and terms of the contracts should be familiar to most hospitality service providers. The NPS will issue requests for proposals that include a clear and complete description of the solicitation process and selection criteria. The request for proposal package will include the draft contract to eliminate uncertainty for those interested in submitting proposals and operating under that contract. The NPS will develop clear, internal operating procedures and manuals addressing various topics, including accounting and financial management practices. The NPS will make these publicly available as appropriate and allowed under applicable law.

8. *Comment:* Several commenters asked the NPS to explain when it will use the VEIA instead of authorities to issue concession contracts, commercial use authorizations,

and leases. One commenter stated that the NPS should not use the VEIA to replace the existing concession contract authority, and should use it only in unique and limited circumstances where concession contracts are not viable or do not give the respondent a chance to make a reasonable profit. Another commenter suggested that the NPS should use the VEIA only if there is no demonstrated interest from potential operators in entering into a concession contract or a commercial use authorization.

*NPS Response:* The statutes authorizing the NPS to enter into concession contracts and commercial use authorizations (54 U.S.C. 101911-101926), and authorizing the NPS to enter into leases (e.g., 54 U.S.C. 102102, 306121), establish requirements the NPS must meet in order to use those authorities. The NPS also must follow applicable regulations and policies it has established for the use of those authorities. See, for example, 36 CFR part 51 – Concession Contracts; 36 CFR part 18 – Leasing of Properties in Park Areas; and Policy Memorandum 07-01 (Authorizing activities through leases versus concession contracts or commercial use authorizations). The VEIA specifically states that nothing in the statute modifies the terms and conditions of any awarded concession contract or the NPS’s ability to enter into concession contracts under the 1998 Act. 54 U.S.C. 101937. This is restated for emphasis in § 52.40 of this rule. The NPS declines to impose limitations in this rule on its use of the VEIA that do not exist in the statute. As a practical matter, existing statutory limitations on the use of the VEIA could make a concession contract more appropriate in certain circumstances. Commercial services contracts awarded under the VEIA cannot exceed ten years and operators cannot receive leasehold surrender interest. As a result, a concession contract may be more appropriate if a significant capital improvement is needed to provide the visitor services. The NPS may want to leverage private investment to fund those improvements and a concession contract would allow for a longer term and an opportunity for the operator to receive leasehold surrender interest for investments made during the term of the contract.

In other cases, the ability to use VEIA contract models and practices more common in the hospitality industry may result in benefits such as cost savings, greater efficiency, increased competition, and greater return to the government. The NPS will evaluate opportunities to provide commercial visitor services on a case-by-case basis to determine which authority is the most appropriate.

*9. Comment:* One commenter recommended that the rule explain how necessary capital improvements would be funded under commercial services contracts given the prohibition on paying leasehold surrender interest.

*NPS Response:* The rule does not specifically address how necessary capital improvements will be funded under commercial services contracts because it may vary from contract to contract. In some cases, operators will conduct capital improvement projects using money from operating and capital improvement accounts that are funded from business revenues or deposits from the NPS that are transferred from the revolving fund. In other cases, the NPS will directly fund and contract for such projects without the involvement of the operator.

*10. Comment:* One commenter asked the NPS to state in § 52.4 of the rule that the NPS may not issue commercial services contracts under the VEIA for guide and outfitter services or contracts for which there is a current preferential right of renewal under the 1998 Act.

*NPS Response:* The NPS has added a new paragraph to § 52.4 of the rule to include these statements.

*11. Comment:* Several commenters asked the NPS to include more detail in the rule about the bid process, in particular about how potential bidders and existing operators may suggest new and additional visitor services, and how the NPS will consider those suggestions during the competitive selection process and during the term of a contract.

*NPS Response:* The NPS often requests ideas for new and additional services as a selection factor in prospectuses issued for concession contracts under the 1998 Act. The NPS may do the same when soliciting proposals for commercial services contracts under the VEIA if the NPS determines that is appropriate. The NPS will explain the details of such requests when they occur. The contracts will specify how the operator can propose new and additional services during the term of the contract. The NPS will not consider new or additional services that would result in a material change to the services authorized by the contract and described in the request for proposals. This will ensure that those who compete for the contract are treated fairly and that this process is consistent with how the NPS manages concession contracts. Defining the processes for proposing new and additional services in requests for proposals and contracts, on a case-by-case basis, gives the NPS more flexibility to tailor those processes to the unique circumstances of each situation.

*12. Comment:* One commenter questioned whether the NPS will meaningfully consider information presented by respondents during request for qualifications, interview, and negotiation phases when § 52.14 of the rule allows, but does not require, the NPS to do so.

*NPS Response:* The rule states that NPS may (rather than must) consider such information because some of the information presented may be irrelevant to the selection process or, due to the nature of the contract, one or more of those phases might not be necessary for the evaluation process for the award of that contract. To the extent that a respondent presents relevant information in a phase that is needed for the selection process, the NPS will consider such information in a meaningful way.

*13. Comment:* One commenter asked the NPS to add language to the rule that protects confidential, proprietary, or other information provided by respondents to the NPS during the solicitation process. This commenter asked the NPS to include a

provision similar to 36 CFR 51.100 that applies to concession contracts, which states that the NPS will not make proposals publicly available until a concession contract is awarded, and then may make proposals and other documents publicly available in accordance with applicable law. This commenter also stated that paragraph (b) in § 52.16 does not prevent the NPS from reviewing a bid developed at substantial expense by one respondent that includes information about its technical and management approach, rejecting that bid, and then sharing and using that information in negotiations with a competing bidder.

*NPS Response:* As it does for concession contracts, before the commercial service contract is awarded, the NPS will consider information in proposals submitted in response to a prospectus as protected from disclosure under the Freedom of Information Act (FOIA), which establishes exemptions for information subject to deliberative process privilege and for trade secrets and commercial or financial information that is confidential or privileged. 5 U.S.C. 552(b)(4)-(5). After the contract has been awarded, the NPS may or will make the proposals and documents publicly available in accordance with applicable law. The NPS does not believe it is necessary to make these statements in the rule because determinations about whether information must be disclosed or not are governed by the FOIA, the Department's FOIA regulations (beginning at 43 CFR 2.1), and other applicable laws. The NPS will use all relevant information in proposals to make award decisions. The NPS must comply with these legal requirements in responding to a request under the FOIA, whether submitted by a respondent or another member of the public.

*14. Comment:* One commenter recommended that the rule require the NPS to publish notices of availability of a request for proposals on the NPS commercial services program website and on the website for the System unit or units where the services would be provided.

*NPS Response:* Paragraph (a) of § 52.11 of the rule states that, in addition to publication in the System for Award Management or similar publication, the NPS also may publish notices of availability electronically on websites, including social media, and in local or national newspapers or trade magazines. For concession contracts, the NPS publishes notices of availability on the websites mentioned by the commenter in accordance with internal policy and procedures. The NPS expects to do the same for commercial services contracts. Rather than make this a regulatory requirement, however, the NPS prefers to maintain the flexibility to publish notifications in a manner that is most appropriate for each request.

*15. Comment:* One commenter recommended that the rule provide more detail about the two potential contracting models identified by the NPS (management agreements and percentage lease agreements) and explain how those models will be used to promote investments that are necessary to expand, modernize, and improve the visitor services and facilities.

*NPS Response:* The management agreement and percentage lease agreement models are explained above in more detail than they were in the preamble of the proposed rule and are explained further in the cost-benefit and initial regulatory flexibility analysis that is available in the docket for this rulemaking. The details of how the NPS will use those agreement models to further the goals of the statute will be determined during implementation of the VEIA. The NPS will provide information about implementation of the VEIA on the website for the NPS Commercial Services Program at <https://www.nps.gov/orgs/csp/index.htm>.

*16. Comment:* One commenter encouraged the NPS to use the services of the Youth Conservation Corps for projects related to commercial visitor services provided under the VEIA and asked the NPS to consider a respondent's proposal to use the Youth Conservation Corps as a positive factor in the proposal selection process.

*NPS Response:* The NPS appreciates the skill and experience that the Youth Conservation Corps brings to projects throughout the National Park System and will consider using Corps members for capital improvement projects under the VEIA that are directly funded by the NPS. Rather than establish specific selection factors in this rule, the NPS prefers to maintain flexibility to establish selection factors that are tailored to the specific contracting model being used and the specific objectives of the request. The NPS may identify the use of Corps members as a positive selection factor, if appropriate, and give weight to such commitments as well as other factors as it deems appropriate.

*17. Comment:* One commenter expressed concern that the rule would increase costs to the public by allowing concessioners to set prices for visitor services that do not account for visitors that have a variety of income levels.

*NPS Response:* The NPS is sensitive to the issue of reasonableness and appropriateness of rates and charges for commercial visitor services provided in System units recognizing that it is often more expensive to provide those services in System units compared to other locations outside the System. The NPS will oversee the operations of such businesses to ensure that charges for commercial visitor services are reasonable and appropriate. As described in § 52.28 of the rule, generally, the NPS will accomplish this by approving rates for services provided to visitors based upon market demand, but the Director may specify rates or rate methods for particular services based on factors other than market demand, such as to ensure affordability to a broad segment of visitors.

### **Compliance with Other Laws, Executive Orders, and Department Policy**

#### *Regulatory Planning and Review (Executive Orders 12866 and 13563 and 14094)*

Executive Order (E.O.) 14094 amends E.O. 12866 and reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866 and E.O. 13563. Regulatory analysis, as practicable

and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We developed this rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and amended and reaffirmed by E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA determined that this final rule is not significant.

*Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.)*

This rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 et seq.). This certification is based on the cost-benefit and initial regulatory flexibility analysis for the proposed rule found in the report entitled “Visitor Experience Improvements Authority (VEIA) Proposed Rule Regulatory Assessment (RA) and Initial Regulatory Flexibility Analysis (IRFA),” which can be viewed on <https://www.regulations.gov> in Docket ID: NPS-2022-0003. The certification in that report remains valid for the final rule due to the limited changes in this rule from the proposed version.

*Congressional Review Act (CRA)*

This rule is not a major rule under 5 U.S.C. 804(2), the CRA. This rule:

- (a) Will not have an annual effect on the economy of \$100 million or more;
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and
- (c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 et seq.)*

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or Tribal governments or the private sector. This rule establishes administrative procedures for the NPS and does not impose requirements on other agencies or governments. A statement containing the information required by the UMRA (2 U.S.C. 1531 et seq.) is not required.

*Takings (E.O. 12630)*

This rule does not effect a taking of private property or otherwise have takings implications under E.O. 12630. A takings implication assessment is not required.

*Federalism (E.O. 13132)*

Under the criteria in section 1 of E.O. 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule only affects visitor services provided on NPS-administered lands and waters. A federalism summary impact statement is not required.

*Civil Justice Reform (E.O. 12988)*

This rule complies with the requirements of E.O. 12988. This rule:

- (a) Meets the criteria of section 3(a) requiring agencies to review all regulations to eliminate errors and ambiguity and write them to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring agencies to write all regulations in clear language and contain clear legal standards.

*Consultation with Indian Tribes (E.O. 13175 and Department Policy)*

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. The NPS has evaluated this proposed rule under the criteria in E.O. 13175 and under the

Department's Tribal consultation policy and has determined that Tribal consultation is not required because the proposed rule will have no substantial direct effect on federally recognized Indian Tribes.

*Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 et seq.)*

This rule contains new information collections. All information collections require approval under the PRA. The NPS may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB must approve the new reporting and recordkeeping requirements identified below:

(1) Solicitation of Proposals - The VEIA requires that the NPS solicit proposals for commercial services contracts through a competitive process. The NPS may also award and administer related professional services contracts. The solicitation process may include one or more phases such as a request for qualifications followed by or in concert with a request for more detailed information through a request for proposals. The process could also include interviews with respondents and a negotiation phase. The NPS will use the information collected to evaluate and select the best operator to provide the contracted services. Information submitted in response to a solicitation may include, as applicable to the specific project, types of information similar to the following:

- Information concerning the respondent's ability to comply with the commercial service contract terms and conditions;
- Information that demonstrates that the respondent is a qualified entity;
- Information that demonstrates the respondent's experience and prior performance in operating similar facilities and providing similar services;
- Information concerning the respondent's financial capability;
- Information concerning the respondent's proposed approach and methodology to deliver the services specified; and

- Information that the respondent provides in response to other factors identified in the request for proposals.

## (2) Reporting Requirements

(A) Commercial Services Operators - In order to monitor their performance and make appropriate NPS management decisions, the NPS will require operators providing commercial services under a VEIA contract to provide information to the NPS through reports and plans such as the following:

- Annual Plan that includes information summarizing prior year operating activities, capital projects and facility condition assessment, and financial performance, and outlining projected annual operating and capital budgets, projected annual operating plans, capital project plans and designs, and staffing and marketing plans;
- Monthly Performance Reports that include monthly financial performance statements, capital project and operating performance information; and
- Ad hoc Reports such as environmental or safety incidents reports.

The above types of plans and reports to owners (e.g., NPS) are standard for those providing commercial services in the hospitality industry in the private and public sector. The NPS requires financial data be submitted in accordance with Generally Accepted Accounting Principles (GAAP); however, no standardized form or format is defined for any plans or reports at this time. The NPS expects this to evolve during its implementation of the VEIA and may have forms and formats at a later time. The NPS will obtain OMB approval for any changes in reporting and/or recordkeeping requirements as they are developed.

(B) Professional Services Providers - Professional services providers will be required to provide information to the NPS through deliverables, reports, and plans such as the following:

- Operator Annual Plan Review Report analyzing operator prior year performance and operational, capital project, and financial plans for the upcoming year;
- Monthly Asset Manager Reports analyzing operator operational, capital project, and financial performance; and
- Commercial Services Contract Solicitation Support Deliverables such as financial and business opportunity analysis reports, condition assessment reports, and draft Request for Qualifications/Request for Proposals documents for commercial services contracts.

There is no standard format or form associated with these information requests.

(3) Recordkeeping Requirements - Operators under commercial services contracts and contractors under professional services contracts must keep any records that the Director of the NPS may require for the term of the contract and for five calendar years after the termination or expiration of the contract to enable the Director to determine that all terms of the contract are or were faithfully performed. The Director, for the purpose of audit and examination, must have access to and the right to examine all pertinent records, books, documents, and papers of the operator, contractor, subcontractor, and any parent or affiliate of the operator or contractor (but with respect to parents and affiliates, only to the extent necessary to confirm the validity and performance of any representations or commitments made to the Director by a parent or affiliate of the operator or contractor).

*Title of Collection:* Administration of Visitor Experience Improvements

Authority, 54 U.S.C. 101936.

*OMB Control Number:* 1024–New.

*Form Number:* None.

*Type of Review:* New.

*Respondents/Affected Public:* Business entities desiring to enter VEIA-authorized

contracts with the National Park Service.

*Total Estimated Number of Annual Respondents:* 46 (Commercial Services Operators: 18; Professional Services Providers: 28).

*Total Estimated Number of Annual Responses:* 100 (Commercial Services Operators: 50; Professional Services Providers: 50).

*Estimated Completion Time per Response:* Average time (Varies from 24 hours to 800 hours, depending on respondent and/or activity).

*Total Estimated Number of Annual Burden Hours:* 7,016 hours.

*Respondent's Obligation:* Required to Obtain or Retain a Benefit.

*Frequency of Collection:* On occasion.

*Total Estimated Annual Nonhour Burden Cost:* \$112,900 (for costs associated with solicitations, start-up costs, and recordkeeping requirements).

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function. Please provide a copy of your comments to the NPS Information Collection Clearance Officer at the address specified above in **ADDRESSES**. Please include "1024-AE47" in the subject line of your comments.

*National Environmental Policy Act (NEPA)*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under NEPA is not required. The NPS has determined the rule is categorically excluded under 43 CFR 46.210(i) because it is administrative, financial, legal, and technical in nature. In addition, the environmental effects of this rule are too speculative to lend themselves to meaningful analysis. NPS decisions to enter into contracts under the VEIA will be subject to compliance with NEPA at the time the contracts are executed. The NPS has determined the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

*Effects on the Energy Supply (E.O. 13211)*

This rule is not a significant energy action under the definition in E.O. 13211; the proposed rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and the rule has not otherwise been designated by the Administrator of Office of Information and Regulatory Affairs as a significant energy action. A statement of energy effects is not required.

**List of Subjects in 36 CFR Part 52**

Commercial services, Government contracts, National parks, Visitor services.

In consideration of the foregoing, the National Park Service is adding part 52 to

title 36 of the Code of Federal Regulations to read as follows:

## **PART 52—VISITOR EXPERIENCE IMPROVEMENTS AUTHORITY**

### **CONTRACTS**

#### **Subpart A—Authority and Purpose**

Sec.

- 52.1 What does this part cover?
- 52.2 What is the purpose of a commercial services contract?
- 52.3 How are terms defined in this part?
- 52.4 What types of commercial services contracts may the Director issue?
- 52.5 What types of professional services contracts may the Director issue?

#### **Subpart B—Solicitation, Selection, and Award Procedures**

- 52.10 How will the Director solicit responses for the award of a commercial services contract?
- 52.11 Where will the Director publish notice of the availability of a request for proposals?
- 52.12 How long will respondents have to submit a response?
- 52.13 How will the Director share information with potential respondents after issuing the request for proposals?
- 52.14 How will the Director evaluate responses and select the best one?
- 52.15 When will the Director reject a response?
- 52.16 What options does the Director have in accepting or rejecting a response?
- 52.17 Does this part limit the authority of the Director?
- 52.18 When must the selected respondent execute the contract?
- 52.19 When may the Director award the commercial services contract?
- 52.20 How will the Director solicit and award professional services contracts?

#### **Subpart C—Contract Provisions**

- 52.25 What is the term of a commercial services contract?
- 52.26 When may the Director terminate a contract?
- 52.27 May an operator or professional services provider receive leasehold surrender interest in capital improvements?
- 52.28 Are operator rates subject to approval by the Director?
- 52.29 May operators assign or encumber commercial services contracts?
- 52.30 How may commercial services contracts be funded?

#### **Subpart D—Information and Access to Information**

- 52.35 What records must the operator and professional services provider keep and what access does the Director have to records?
- 52.36 What access does the Comptroller General have to records kept by operators and professional services providers?

#### **Subpart E—Miscellaneous**

52.40 Does this part affect concession contracts under part 51 of this chapter?

52.41 Does the VEIA expire?

52.42 Severability.

**Authority:** 54 U.S.C. 101931-101938.

## **Subpart A—Authority and Purpose**

### **§ 52.1 What does this part cover?**

This part covers the solicitation, award, and administration of commercial services contracts and related professional services contracts. The Director solicits, awards, and administers these contracts on behalf of the Secretary of the Department of the Interior under the authority of the Act of August 25, 1916, as amended and supplemented, 54 U.S.C. 100101 et seq., and title VII of the National Park Service Centennial Act, 54 U.S.C. 101931–101938. All commercial services contracts and related professional services contracts must be consistent with the requirements of this part. These contracts will contain such terms and conditions as required by this part or law and as otherwise appropriate in furtherance of the purposes of this part and the Visitor Experience Improvements Authority (VEIA).

### **§ 52.2 What is the purpose of a commercial services contract?**

The National Park Service (NPS) will use commercial services contracts to expand, modernize, and improve the condition of commercial facilities and commercial services provided to visitors in a park area. Commercial services contracts are limited to those that are necessary and appropriate for public use and enjoyment of the park area in which they are located and consistent with the preservation and conservation of the resources and values of the park area.

### **§ 52.3 How are terms defined in this part?**

*Award* occurs when the Director and a selected respondent execute a commercial services contract or related professional services contract that creates legally binding obligations on the parties to the contract.

*Commercial services contract* means a binding written agreement between the Director and an operator awarded under the authority of this part that authorizes the operator to provide services to visitors within a park area under specified terms and conditions.

*Contract* means either a commercial services contract or a related professional services contract issued under the authority of this part. The Director may award contracts without regard to Federal laws and regulations governing procurement by Federal agencies, with the exception of laws and regulations related to Federal Government contracts governing working conditions and wage rates, including the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), 40 U.S.C. 3141–3144, 3146, and 3147 (commonly known as the “Davis-Bacon Act”), and any civil rights provisions otherwise applicable thereto. Contracts as defined in this section are not contracts within the meaning of 41 U.S.C. 601 et seq. (the Contract Disputes Act) and are not service or procurement contracts within the meaning of statutes, regulations, or policies that apply only to Federal service contracts or other types of Federal procurement actions.

*Director* means the Director of the National Park Service (acting on behalf of the Secretary), or an authorized representative of the Director, except where a particular official is specifically identified in this part.

*Operator* means an individual, corporation, or other legally recognized entity that duly holds a commercial services contract.

*Professional services contract* means a binding written agreement between the Director and a professional service provider awarded under the authority of this part that authorizes the service provider to provide hospitality consulting or other services to the National Park Service related to commercial services contracts.

*Professional services provider* means an individual, corporation, or other legally

recognized entity that duly holds a professional services contract.

*Qualified entity* means an individual, corporation, or other legally recognized entity that the Director determines has the experience and financial ability to carry out the terms of a commercial services contract or professional services contract.

*Respondent* means an individual, corporation, or other legally recognized entity that submits a response for a commercial services contract.

*Response* means the information an individual, corporation, or other legally recognized entity provides to the National Park Service in response to a request for proposals.

*VEIA* means the authority granted to the Director under title VII of Public Law 114-289 entitled “Visitor Experience Improvements Authority” and codified at 54 U.S.C. 101931–101938.

*Visitor services* means accommodations, facilities, and other services determined by the Director as necessary and appropriate for public use and enjoyment of a park area provided to park area visitors for a fee or charge by an individual or entity other than the Director. Visitor services may include, but are not limited to, lodging, campgrounds, food service, merchandising, tours, recreational activities, guiding, transportation, and equipment rental. Visitor services also include the sale of interpretive materials or the conduct of interpretive programs for a fee or charge to visitors.

#### **§ 52.4 What types of commercial services contracts may the Director issue?**

(a) Except as stated in paragraph (b) of this section, the Director may issue commercial services contracts for expanding, modernizing, and improving visitor services consistent with the VEIA. Examples of such contracts include, without limitation, management agreements and percentage lease agreements.

(b) The Director may not award commercial services contracts:

(1) For the provision of outfitter and guide services described in section 54 U.S.C.

101913(8); or

(2) To authorize the provision of facilities or services for which the Director has granted to an existing concessioner a preferential right of renewal as defined in 54 U.S.C. 101911 and 101913.

**§ 52.5 What types of professional services contracts may the Director issue?**

The Director may issue professional services contracts that support the National Park Service in soliciting, awarding, and managing commercial services contracts. Professional services contracts may include asset management agreements under which a service provider assists the National Park Service in overseeing and administering commercial services contracts but does not itself provide visitor services. Professional services contracts also may include contracts for the provision of other consulting services to the National Park Service such as developing requests for proposals, condition assessments, operational or financial analysis, accounting, and other related services.

**Subpart B—Solicitation, Selection, and Award Procedures**

**§ 52.10 How will the Director solicit responses for the award of a commercial services contract?**

(a) The Director will award commercial services contracts through a competitive selection process. The Director will issue a request for proposals inviting responses for consideration by the Director. The request for proposals will describe the terms and conditions of the proposed commercial services contract and the procedures the Director will follow to negotiate and award the commercial services contract.

(b) The terms and conditions of the request for proposals and the proposed commercial services contract are not final until the Director awards the commercial services contract.

(c) The solicitation process may include one or more phases, such as a request for qualifications followed by or in concert with a request for more detailed information

through a request for proposals. The process could also include interviews with respondents and a negotiation phase.

(d) If the entity that will become the operator is not established at the time of submission of a response, the response must contain assurances satisfactory to the Director that the entity that will become the operator will be a qualified entity as of the date of the award of the commercial services contract and otherwise have the ability to carry out the commitments made in the response.

**§ 52.11 Where will the Director publish notice of the availability of a request for proposals?**

(a) The Director will publish notice of the availability of the request for proposals at least once in the System for Award Management (SAM) where Federal business opportunities are electronically posted or in a similar publication if SAM is no longer used. The Director may also publish notices electronically on websites, including social media, and in local or national newspapers or trade magazines.

(b) The Director will make the request for proposals available upon request to all interested persons. The Director may charge a reasonable fee for a printed request for proposals.

**§ 52.12 How long will respondents have to submit a response?**

The Director will define the process and the timeline for responding and entering into negotiations in the request for proposals. The Director will not consider untimely responses.

**§ 52.13 How will the Director share information with potential respondents after issuing the request for proposals?**

If the Director shares material information directly related to the request for proposals with one potential respondent, the Director will share the same information with all potential respondents who have advised the Director of their interest in the

request for proposals. This does not apply to information that is publicly available.

**§ 52.14 How will the Director evaluate responses and select the best one?**

(a) The Director will apply the selection factors set forth in the request for proposals. The evaluation will include an assessment of the respondent's written submittals in response to the request for proposals and also may include information presented by the respondent during request for qualifications, interview, and negotiation phases. During this process, the Director may request written clarifications from any respondent that has submitted a timely response.

(b) The Director will use selection factors to evaluate responses that include compliance with the requirements in the request for proposals, ability to comply with the terms and conditions of the commercial services contract, demonstration that the respondent is a qualified entity, demonstrated experience and prior performance in operating similar facilities and providing similar services, financial capability, and the proposed approach and methodology to deliver the services specified. The Director may include other factors that are identified in the request for proposals.

(c) The Director must determine that the commercial services contract issued to the selected respondent will meet the objectives of expanding, modernizing, and improving the condition of commercial facilities and commercial services provided to visitors in the park area, and that such contract is both necessary and appropriate for public use and enjoyment of the park area, and consistent with the preservation and conservation of the resources and values of the park area.

**§ 52.15 When will the Director reject a response?**

The Director will reject any response if the Director makes any of the following determinations:

(a) The respondent is not a qualified entity.

(b) The response is not responsive to the requirements in the request for

proposals. A response is not responsive if the Director determines that it is not timely, does not meet the minimum requirements of the proposed contract, or does not provide the information required by the request for proposals.

**§ 52.16 What options does the Director have in accepting or rejecting a response?**

(a) If no responsive responses are submitted, the Director may cancel the solicitation. After cancellation, the Director may establish new commercial services contract requirements and issue a new request for proposals.

(b) The Director reserves the right to accept or reject any or all responses received as a result of the solicitation, to waive minor irregularities, or to negotiate with any respondent, in any manner necessary, to serve the best interests of the National Park Service.

(c) No respondent or other person or entity will obtain compensable or other legal rights as a result of an amended, extended, canceled, or resolicited request for proposals for a contract.

**§ 52.17 Does this part limit the authority of the Director?**

Nothing in this part may be construed as limiting the authority of the Director at any time to determine whether to solicit or award a contract, to cancel a solicitation, or to terminate a contract in accordance with its terms.

**§ 52.18 When must the selected respondent execute the contract?**

The selected respondent must execute the contract within the time period established by the Director. If the selected respondent fails to execute the contract in this period, the Director may select another responsive response and enter into negotiations with that respondent, or may cancel the solicitation and choose to resolicit the contract.

**§ 52.19 When may the Director award the commercial services contract?**

The Director may award a commercial services contract at any time after selecting the best response, the conclusion of negotiations, and execution of the contract by the

respondent.

**§ 52.20 How will the Director solicit and award professional services contracts?**

The Director will advertise each opportunity for professional services contracts at least once in the System for Award Management (SAM) where Federal business opportunities are electronically posted or in a similar publication if SAM is no longer used. The Director may also publish notices electronically on websites, including social media, and in local or national newspapers or trade magazines. The Director will evaluate and select professional services providers that are qualified entities following the procedures described in the advertised opportunity.

**Subpart C—Contract Provisions**

**§ 52.25 What is the term of a commercial services contract?**

A commercial services contract will generally be awarded for a set term or for a base term plus option years, with the total term not to exceed 10 years.

**§ 52.26 When may the Director terminate a contract?**

Contracts will contain appropriate provisions for suspension of operations and for termination by the Director for default, including, without limitation, unsatisfactory performance, or termination when necessary to achieve the purposes of the VEIA.

**§ 52.27 May an operator or professional services provider receive leasehold surrender interest in capital improvements?**

No. Operators and professional services providers will not receive leasehold surrender interest in capital improvements, as those terms are defined at 54 U.S.C. 101915.

**§ 52.28 Are operator rates subject to approval by the Director?**

(a) The Director may require prior approval of rates for services provided to visitors under a commercial services contract.

(b) Generally, the Director will approve rates for services provided to visitors

based upon market demand, although the Director may specify rates or rate methods for particular services based on factors other than market demand, such as to ensure affordability to a broad segment of visitors.

**§ 52.29 May operators assign or encumber commercial services contracts?**

Commercial services contracts will include provisions that require the Director's approval prior to any assignment or encumbrance of the contract or any rights or interests under the contract to another operator.

**§ 52.30 How may commercial services contracts be funded?**

Contract funds will be provided to the operators, who will be solely responsible for maintaining and expending the funds on agreed-upon expenses. Commercial services contracts will clearly define what contract-related funds shall be considered revenue collected for the NPS and will provide for the periodic remittance of such funds to the NPS.

**Subpart D—Information and Access to Information**

**§ 52.35 What records must the operator and professional services provider keep and what access does the Director have to records?**

Operators and professional services providers must keep any records that the Director may require for the term of the contract and for five calendar years after the termination or expiration of the contract to enable the Director to determine that all terms of the contract are or were faithfully performed. The Director, or an authorized representative of the Director, may access and examine all pertinent records, books, documents, and papers of the operator, professional services provider, and any subcontractor, parent, or affiliate of the operator or professional services provider (but with respect to parents and affiliates, only to the extent necessary to confirm the validity and performance of any representations or commitments made to the Director by a parent or affiliate of the operator or professional services provider). Further details on records

maintenance and access will be set forth in and governed by the contracts themselves.

**§ 52.36 What access does the Comptroller General have to records kept by operators and professional services providers?**

The Comptroller General of the United States, or an authorized representative of the Comptroller General, may access and examine all pertinent records, books, documents, and papers of the operator, professional services provider, and any subcontractor, parent, or affiliate of the operator or professional services provider (but with respect to parents and affiliates, only to the extent necessary to confirm the validity and performance of any representations or commitments made to the Director by a parent or affiliate of the operator or professional services provider) going back five years from the closing date of the last fiscal year of the operator or professional service provider.

**Subpart E—Miscellaneous**

**§ 52.40 Does this part affect concession contracts under part 51 of this chapter?**

No, nothing in this part modifies the terms or conditions of any existing concession contract or the ability of the Director to enter into concession contracts under part 51 of this chapter. The 1998 Act (as that term is defined in part 51 of this chapter) remains in effect.

**§ 52.41 Does the VEIA expire?**

Yes. The Director may not award a contract under the VEIA after December 16, 2025, unless extended by law. However, contracts awarded under the VEIA may continue beyond such date, subject to the terms of the particular contract.

**§ 52.42 Severability.**

A determination that any provision of this part is unlawful will not affect the validity of the remaining provisions.

