

STATEMENT OF PEGGY O'DELL, DEPUTY DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON NATIONAL PARKS, FOREST AND PUBLIC LANDS OF THE HOUSE COMMITTEE ON NATURAL RESOURCES, CONCERNING CONCESSION CONTRACT ISSUES FOR OUTFITTERS, GUIDES AND SMALLER BUSINESSES

August 2, 2012

Mr. Chairman, I appreciate your invitation to appear at this hearing to discuss concession contract issues related to small businesses that provide visitor services in national parks. My remarks will focus on three principal areas: 1) the scope of commercial visitor services provided by small businesses in parks; 2) the programs and policies the NPS has implemented to support these businesses; and 3) insurance requirements for these businesses.

Background on Commercial Services Provided By Small Businesses in National Parks

The overall objective of the NPS Commercial Services Program is to enhance the visitor experience by establishing agreements with private businesses to provide high-quality, safe hospitality and recreational services to visitors, and to provide a fair financial return to the Federal government in exchange for the right to operate in a national park. To accomplish this, the NPS competitively awards and manages concession contracts in accordance with the National Park Service Concessions Management Improvement Act, Title IV of the National Parks Omnibus Management Act of 1998 (Public Law 105-391).

The NPS administers approximately 515 of these concessions contracts in 130 parks. These contracts are typically awarded for a period of 10 years.

There is no statutory definition for small businesses in P.L. 105-391. However, the NPS does track concessioners based upon their revenue, which can be an indicator of business size. The vast majority of concession contracts generate less than \$500,000 in annual revenue. In 2010, 368 contracts, or 71 percent, generated less than \$500,000 per year; and 60 percent had revenues less than \$250,000. Less than 21 percent of concession contracts generate more than \$1 million in revenue per year. Although the majority of our concession operations are smaller in terms of gross revenues, competition for this category of contracts remains strong, indicating they provide a profitable business opportunity.

In addition to these concession contracts, the NPS administers over 4,000 Commercial Use Authorizations (CUAs) for commercial activities in parks. Many of these also go to smaller businesses. Approximately 14 percent of these businesses that have CUAs operate solely within the park and generate \$25,000 or less in gross revenue. Others, which begin and end outside the park, can be significantly larger operations.

In accordance with P.L. 105-391, non-profit institutions are not required to obtain CUAs unless taxable income is derived by the institution from the authorized use. When taxable income will not be derived from the authorized use, a special park use permit may be issued to a non-profit entity to authorize commercial services, such as guiding, when the money is exchanged off of park property.

The NPS issues special park use permits to authorize a wide range of activities that are planned by individuals, organizations or businesses, such as First Amendment activities, special events, commercial filming and rights-of-way. Superintendents use special use permits to minimize unacceptable impacts to park resources and values, avoid potential conflicts between disparate park uses, and ensure visitor safety. If approved, special park use permits allow the NPS to recover costs associated with permitting and managing the event, and may require the posting of a security bond and proof of liability insurance.

Insurance in an amount sufficient to protect the interests of the United States may be required as a condition of the permit. High risk activities, such as fireworks, black powder demonstrations, or sporting events will always require liability insurance, while the insurance requirement can be waived for lower risk activities such as a commemorative ceremonies, community events or weddings.

Encouraging and Managing Small Businesses in Parks

The NPS has implemented numerous policies and procedures to encourage small businesses to operate in parks while ensuring the quality and safety of the services. First, P.L. 105-391 provides that all incumbents grossing less than \$500,000, and all outfitters and guides, have a preferential right of contract renewal if the concessioner has operated satisfactorily during the term of its contract and has submitted a responsive proposal for the new contract. Close to 400, or about 75 percent of all our concession contracts, fall into this category. For example, the Grand Teton rafting contracts awarded in 2010 were all classified as outfitters and guides and were afforded this preferential right.

In addition to the preferential right opportunity, where appropriate, the NPS has split previously larger contracts into smaller opportunities, which may attract smaller operators. To further encourage small and local businesses to bid on prospective contracts, including those businesses that might not have previously operated in a park or might not know of the opportunities that exist, parks have announced these opportunities in local papers and through other media outlets.

A number of new small businesses have been successful in winning concession contract awards. Examples include Mabry Mill at Blue Ridge Parkway, formerly part of a larger contract, and a new bicycle concession that was recently awarded at the South Rim of the Grand Canyon.

One category of concession contracts that is geared toward small businesses is the Category III contract. The Category III concession contract is for those activities that have no land assignment within a park. These contracts are less complex and often have

reduced management and reporting requirements. For example, in most cases we do not require documented environmental management plans or require the development of maintenance plans. In addition, we have developed streamlined Operating and Risk Management Plans, and all concession contracts generating less than \$500,000 in annual revenue have simplified annual financial reporting.

The NPS provides similar considerations for Commercial Use Authorizations. CUAs are often issued without competition provided that applicants demonstrate that the services they provide are appropriate for the park and meet basic business standards. Operational and financial reporting are also significantly reduced for these businesses.

Insurance Requirements for Commercial Operations

NPS policy requires that concession contracts identify the types and minimum amounts of insurance required of the concessioner. This policy ensures that concessioners providing services to park visitors have the ability to cover bona fide claims for bodily injury, death, or property damage arising from an action or omission of an operator. Insurance also protects the business from significant claims that may interfere with the concessioner's ability to continue operations. To appropriately protect visitors and businesses, such insurance requirements are applied to all concession contracts based on the risk associated with the service provided.

To ensure that our practices are consistent with those of the recreation and hospitality industries, the NPS uses private-sector business consultants to aid in the development of prospectuses for concession contracts. As part of our effort to professionalize our business practices, the NPS hired PricewaterhouseCoopers in 1999, and MFL Consulting (and its subcontractor, Aon Global Risk Consulting) in 2009, to review our concessions program, including insurance requirements, as appropriate.

In 2006, as a result of the initial review by our consultant, the NPS instituted a process to conduct a detailed risk and insurance-requirements analysis during the development phase of each new concession contract. This analysis is completed by an expert, independent professional insurance consultant to ensure more accurate current minimum insurance coverages for NPS contracts. The consultant uses detailed information on the specific activity, as well as current industry data and practices, to identify appropriate levels of insurance based on the risk associated with the particular concession operation. Risk factors include such things as the class of river rapids, the guide-to-client ratio, and the estimated number of participants potentially involved in an incident.

Our insurance experts indicate that the minimum commercial liability insurance needed for relatively low-risk operations currently starts around \$1,000,000. However, backcountry operations are deemed to carry higher risk, and therefore the expert risk analysis typically results in insurance coverage recommendations that are significantly higher.

The minimum insurance requirements and associated costs are fully considered in the concession contracting process. The insurance consultant provides the NPS with an internal analysis of the potential cost of the insurance that is recommended. The projected cost of the insurance is considered as an operating expense of the concession contract as part of an overall financial analysis. A prospectus is released only if a reasonable opportunity for profit exists for the concessioner considering industry internal rate-of-return benchmarks. Higher projected operating costs, such as the cost of increased insurance requirements, usually means a lower franchise fee is paid by the concessioner.

Once the risk analysis is completed, the NPS includes the established insurance types and minimum coverages in an insurance exhibit in the draft contract provided as part of the prospectus. Prospective offerors are instructed to review all the terms of the contract and to conduct their own financial analysis before submitting their proposals. When submitting a proposal, an offeror specifically agrees to the terms of the entire contract, including the insurance requirements. Finally, awardees sign the contract agreeing to all the terms, including insurance.

Grand Teton Rafting

In the case of the contracts issued in 2010 for Grand Teton National Park rafting companies, which we understand may be of particular interest to the Committee, the PricewaterhouseCoopers Risk Management Division recommended per-occurrence and aggregate general liability coverage minimums of \$5 million. These insurance minimums were provided in the draft contracts. The winning offerors agreed to the requirements as contract terms.

Following issuance of the contract and in response to concessioner concerns that the minimum insurance amounts in the contracts they signed were unnecessarily high, the minimums were further analyzed by a second NPS consultant, MFL (and its subcontractor, Aon Global Risk Consulting) in 2011. The recommended coverages were validated by Aon as appropriate given the nature of the services.

In 2010, the NPS also conducted a financial analysis of four of the Grand Teton National Park rafting contracts to assess the impact of the insurance requirements using actual insurance rate data reported by concessioners. Results showed that the concessioners' internal rates of return with the new insurance requirements were all well above the industry benchmark.

The NPS and its expert consultants continue to review our insurance risk analysis processes. We are currently concluding a study that evaluates additional, independently collected injury and loss data for rafting services, refining risk assessment criteria and assessing the most cost-effective market sources for insurance. We will consider this information as we endeavor to ensure that concessioners carry the insurance appropriate to protect our visitors and concession operations while providing a reasonable opportunity for a profit to the businesses and a fair return to the government.

The NPS will also continue to pursue ways to encourage small and local businesses to bid on contracts and to ensure that management and oversight requirements are appropriate to the size and complexity of the operations.

This concludes my testimony. I would be happy to answer any questions you might have.