
Chapter 4

Selecting a Concessionaire

This chapter discusses the selection process. See Appendices 4A through 4D on pages 4-6—4-14 for a more detailed discussion of the selection process.

Evaluation Method

Rank the criteria using the fixed-weight or non-fixed-weight method described below.

Fixed Weights

The simplest method is to assign a certain percentage to each criterion, based on a total of 100 percent; or to assign specific points representing the importance of each criterion, e.g., Criterion 1 = 50 points, Criterion 2 = 30 points, and Criterion 3 = 20 points. Because this method requires exactness, it is fairly restrictive in terms of how applications are evaluated.

Non-Fixed Weights

The non-fixed-weight method uses adjectives to describe the relative importance of criteria, without assigning specific points or percentages, such as:

The proposed operating plan is the most important criterion; it is more important than business experience. Both of these criteria are more important than the availability of financial resources, and the least important criteria are the fee to the Government and use fees charged to the public, with the former being more important than the latter.

The evaluators then score each application based on this descriptive ranking of the criteria, rather than on a numeric ranking. A point total may still be assigned to each application.

Thus, an application evaluated under the non-fixed weights in the above example, with an excellent operating plan and business experience, good availability of financial resources, a fairly low proposed fee to the Government, and an average proposal for use fees charged to the public may be given a total of 80 out of 100 total points. Another application with an average operating plan and business experience, fair availability of financial resources, a fairly high proposed fee to the Government, and an excellent proposal for use fees charged to the public might be rated 65 out of 100 points.

The non-fixed-weight method is a more subjective means of evaluation, but has the advantage of allowing evaluators to rank applications without being constrained by precise numerical weights. It has the disadvantage of being less defensible than the fixed-weight method, because of its greater subjectivity. An applicant who receives a score that is only a few points lower than the successful applicant's (e.g., 20 points lower when the total possible score is 100) may complain that the evaluation was unfair. Without fixed weights, it is more difficult to justify the evaluation process that led to the lower score.

Regardless of which method is used, the evaluation team may wish to consider using a tradeoff analysis, to weigh technical merit and the fee to the Government. This process is explained in the next section.

Tradeoff Analysis

Include a statement in the prospectus reserving the right of the FS to issue the permit on the basis

of a tradeoff between the fee to the Government and technical merit. This approach allows the FS to determine whether an application with a high technical rating justifies accepting a lower fee. For example, assume the following ranking for three applications:

<u>Application</u>	<u>Technical Score</u>	<u>Fee</u>
1	900	\$25,000
2	700	\$40,000
3	600	\$35,000

Tradeoff analysis allows evaluators to determine whether the higher technical rating for Application 1 (900) justifies the lower fee (\$25,000), or whether the higher fee for Application 2 (\$40,000) justifies the lower technical rating (700). It may be necessary to look at the annual fee and the fee over the life of the permit, to make this determination. Document the rationale for any tradeoff between the fee to the Government and technical merit.

Evaluation of Applications

To be considered for issuance of a permit, applications must be received on time. Applications will be considered late if received after the due date specified in the prospectus, unless late receipt is due solely to mishandling by the FS. If only one application is received and it is late, the FS has the discretion to accept it.

Rating forms may be developed for the evaluation process. Ratings should be consistently applied to elements of applications and among applications, to ensure a thorough and fair evaluation. Each evaluation team member must support the ratings assigned with a concise narrative addressing strengths and weaknesses in the application. (A sample rating form is included in Appendix 4A, pages 4-6–4-9.)

The evaluation must primarily be based on the information in the application submitted to the FS. Information may be obtained from other sources, if the use of such information is part of the normal evaluation process or if the applicants are notified of such use. If outside information—references,

for example—is used to evaluate one application, it must be used to evaluate all of them.

Technical components of applications, such as the operating plan, require

- ☐ Documentation of the basis for evaluation.
- ☐ An analysis of what is acceptable and unacceptable, including an assessment of each applicant's ability to accomplish the technical requirements.
- ☐ A summary or matrix of the ratings.
- ☐ A summary of findings.

The FS will establish a minimum permit fee in the prospectus as a flat dollar amount. The minimum fee will establish a floor for the fee proposed by applicants. Although the permit fee will be proposed as a percentage of gross revenue, that percentage should equate to a value that at least equals the minimum fee.

Before deciding which application to accept, evaluate the proposed fee to the Government separately from technical merit. Examine the proposed fee to determine what the Government will likely receive. Evaluate the percentage of gross revenue proposed in light of the projected net revenue for the concession submitted by the applicant in the applicant's forecast of concessionaire income and expenses. Determine whether the revenue and expense projections are realistic. In addition, assess whether visitation and other assumptions are accurate and reasonable, and whether the proposed fee equals or exceeds the minimum fee.

Whenever all or most of the applicants propose a fee that is less than the minimum, the FS should ask all those applicants why they believe the minimum fee is higher than fair market value. If these discussions convince the FS that its estimate is too high, the FS should withdraw the prospectus, establish a new minimum fee, and issue a new prospectus, if the FS believes the concession is still viable in light of the new minimum fee.

If only one applicant responds to the prospectus, the proposed AOP provisions for the concession may be negotiated with the applicant. If no applicants respond to the prospectus, reevaluate

the concession opportunity. Consider whether the prospectus can and should be modified to make it attractive, and reissued; or whether the opportunity cannot be made viable, and should not be readvertised. If there are no applicants, inquiries may be made of potential applicants strictly as to why they did not apply.

Selection of an Applicant

Upon completion of the evaluation, the selecting official must decide whether to issue the permit without oral or written discussions. Issuing the permit based on initial applications is appropriate if it would produce the most advantageous result for the FS, and the prospectus includes a provision that reserves the FS's right to do so.

If any uncertainty exists concerning the technical or fee aspects of an application, the permit should not be issued without further discussion. "Discussion" includes any oral or written communication between the FS and an applicant that allows the applicant to revise or modify his/her application.

Do not issue a permit based on initial applications if discussions have been conducted with one or more applicants for any purpose other than clarification. "Clarification" means communication with an applicant for the sole purpose of eliminating minor irregularities, informalities, or clerical mistakes in the application. Under these circumstances, do not allow the applicant to modify his/her application.

Establishing a Competitive Range

When a permit should not be issued on the basis of initial applications, the selecting official must decide which potential applicants should be included in the competitive range, for the purpose of conducting written or oral discussions. The competitive range must be determined on the basis of the fee and other factors that were stated in the prospectus, and must include all applications that have a reasonable chance of being selected. The selecting official may limit the number included

in the competitive range to a number that allows proper evaluation.

Selecting officials have broad discretion in determining whether to place an application in the competitive range. However, the selecting official may not treat similarly situated applications differently. Do not exclude applicants from the competitive range on the basis of a predetermined cut-off score. Base inclusion or exclusion of a particular application on the array of scores obtained from applicants.

Exclusion is appropriate if the deficiencies are so material as to preclude any possibility of upgrading, except through major revisions or additions. Exclude applications that contain requirements or conditions that could not be met without detracting from technical acceptability.

Written or Oral Discussions

There is no need to conduct oral or written discussions with applicants outside the competitive range. Oral or written discussions should be conducted with all applicants in the competitive range whose applications contain technical deficiencies (parts of the application that do not satisfy the FS's minimum requirements). Ensure that discussions disclose only deficiencies. During discussions, point out all deficiencies in the applications, not just in selected areas.

Determine deficiencies only from evaluation of each application against the specific evaluation criteria established in the prospectus. Do not determine deficiencies in an application by comparison with competing applications. Do not disclose the strengths and weaknesses of, or any information from, competing applications. Unless an application is removed from the competitive range after uncertainties are resolved, allow an applicant to revise his/her initial application.

After written or oral discussions have been conducted, solicit best and final applications. Invite all applicants in the competitive range, including those with whom no discussions were held, to submit a best and final application. The request for best and final applications must include

- ☐ A statement that discussions are concluded.
- ☐ A statement that best and final applications should be submitted.
- ☐ A due date and time that give a reasonable opportunity for submission of best and final applications.
- ☐ A statement that if any modification is submitted, it must be received by the date and time specified.

If there is any additional discussion with an applicant after the submission of best and final applications and before issuance of a permit, there must be additional discussions with all applicants remaining in the competitive range, and another round of best and final applications. Do not discuss deficiencies remaining from the initial applications if the applicant has already been informed of the deficiencies.

Issuance of a Permit

Issuance of a permit must be made on a rational basis, in accordance with the evaluation criteria and procedures included in the prospectus. Do not alter the relative importance of the criteria in the prospectus without amending and reissuing the prospectus, as discussed in Chapter 3. Issuance of a permit as a result of a tradeoff between the fee and technical merit must be supported by the established criteria, and justified in writing.

All applicants should receive a letter notifying them of the selection decision and their appeal rights under 36 CFR Part 251, Subpart C. The letter to the selected applicant should contain all the requirements that must be met before a permit is issued. (Appendices 4B and 4C, on pages 4–10-12, contain sample notification letters.) In addition, provide the following documents to the selected applicant:

- ☐ Garbage and Toilet Pumping Standards.
- ☐ Form FS-1300-5, "Customer Service Comment Card."
- ☐ Daily Use and Fee Collection Form.

Follow-Up

Furnish the basis for the selection decision to any unsuccessful applicant who requests it in writing. Include the FS's evaluation of significant deficiencies in the requester's application. Do not make comparisons with other applications or reveal the evaluation scoring. Return unsuccessful applications after the appeal period has expired.

FOIA Requests

The following is a summary of general legal principles applicable to requests for information from applications, either selected or unsuccessful, under the Freedom of Information Act (FOIA). Determinations of whether to release requested information depend on the circumstances of each situation. Consult with the local Office of the General Counsel (OGC) and the local FOIA coordinator in the event information from applications is requested. See FSM 6270 and FSH 6209.13 on FOIA and the Privacy Act for additional information.

Do not guarantee in the prospectus or otherwise the confidentiality of information submitted in applications. State that this information may be kept confidential only to the extent permitted under applicable law, i.e., FOIA and the Privacy Act.

Information submitted in response to a prospectus may be withheld if it qualifies as confidential business information under exemption (b)(4) of FOIA. Financial statements would probably qualify under exemption (b)(4).

However, information that qualifies under exemption (b)(4) must be released if the information becomes part of the public record, e.g., by being

attached to the permit issued to the selected applicant. For example, information contained in an operating plan attached to a permit does not qualify as confidential business information under exemption (b)(4), because the operating plan and permit are public documents.

Information may also be withheld under exemption (b)(5) of FOIA if it is involved in the FS's deliberative process. To justify use of exemption (b)(5), it must be shown that release of the information would harm the FS's ability to make a decision based on that information. This justification is also necessary to meet the Attorney General's foreseeable-harm policy on exemption (b)(5). (This policy is inapplicable to exemption (b)(4) concerning release of confidential business information.)

A request for evaluation scores and ratings before or after a decision is made to issue a permit would probably qualify under exemption (b)(5). As a general rule, the application evaluation process should be protected from disclosure before, during, and after the evaluation, to maintain the integrity of the process.

If a decision is made to release information submitted in an application, applicable regulations require the FS to give the submitter prior notice and an opportunity to respond. Consult with the local OGC on the regulations and procedures to follow.

Appeals

A decision to issue a permit through issuance of a prospectus is subject to the agency's administrative-appeal procedures at 36 CFR Part 251, Subpart C. Do not issue a permit until all prerequisites for the permit have been met and the appeal period (and if an appeal is filed, the appeal itself) have concluded.

If a bid protest is filed with the General Accounting Office involving issuance of an FS campground concession permit, the affected Forest should immediately notify the Recreation, Heritage, and Wilderness Resources Management staff in Washington.

Prerequisites to Issuance of a Permit

The prerequisites to issuance of a permit discussed in Chapter 3 must be met by the selected applicant. If not, the applicant that receives the next highest rating should be selected, subject to a financial-ability determination (FAD) and the prerequisites to permit issuance.