

bid. The bid and payments must be enclosed in a sealed envelope upon which the prospective bidder shall write: (a) Bid on interest in land of the National Park System, and (b) the scheduled date the bids are to be opened. In the event two or more valid bids are received in the same amount, the determination of which is the highest will be by drawing. Bids will be opened at the time and place specified in the notice. Bidders, their agents or representatives, and any other persons may attend the bid opening. No bid in an amount less than the fair market value, as herein defined, shall be considered.

[42 FR 46302, Sept. 15, 1977, as amended at 61 FR 28508, June 5, 1996]

§ 17.6 Action at close of bidding.

The person who is declared by the authorized officer to be the high bidder shall be bound by his bid and the regulations in this part to complete the purchase in accordance therewith unless his bid is rejected or he is released therefrom by the authorized officer. The declared high bid on property for which a preference right exists will be conditionally accepted subject to the exercise of the preference as described below. In the case of a freehold interest, the high bidder must submit the balance of the bid within 45 days of the bid award in the form of a certified check, post office money order, bank draft, or cashier's check, made payable to the United States of America. Failure to submit the full balance within 45 days will result in the forfeiture of \$1,000 of bid deposit, unless the bidder has been released from the bid or an extension has been granted by the authorized officer, and the property will be awarded to the next highest bidder upon fulfillment of the requirements of this section.

[42 FR 46302, Sept. 15, 1977, as amended at 61 FR 28508, June 5, 1996]

§ 17.7 Preference rights.

On any property which has been in Federal ownership less than two years, the Secretary, in addition to the notice specified in § 17.4, shall inform the last owner or owners of record by certified mail at their present or last known ad-

dress of the highest bid on the interest and advise them of their right to acquire the interest for an amount equal to the highest bid if within 30 days they notify the Secretary of their desire to do so and make payment or agree to make payment of an amount equal to that specified in § 17.5.

If within 30 days of mailing of such notification, the former owner or owners do not indicate a desire to acquire the interest and make payment or agree to make payment for such interest in an amount equal to the declared high bid, or, if they do indicate such a desire but fail to consummate the transaction within the time period established for the conveyance, then the bid of the declared high bidder will be accepted. In the event that a former owner who indicates a desire to repurchase pursuant to this procedure fails to consummate the transaction within the established time period the declared high bidder shall be permitted, but not required, to consummate the transaction. If the declared high bidder does not choose to consummate the transaction in this circumstance, the entire transaction will be cancelled, and, if appropriate, a new bidding procedure instituted.

§ 17.8 Conveyance.

Conveyance of a leasehold or freehold interest shall be by lease or deed, as appropriate, at the highest bid price, but not less than fair market value. All conveyance of leasehold or freehold interests shall contain such terms and conditions as the Secretary deems necessary to assure use of the property in a manner consistent with the purpose for which the area was authorized by Congress. The conveyancing or leasing document shall contain such provisions and restrictions as may be determined by the Secretary to be necessary to protect the natural, historic, cultural or other values present on the lands. All conveyances shall be without warranty.

PART 18—LEASES AND EXCHANGES OF HISTORIC PROPERTY

Sec.

- 18.1 Authority.
- 18.2 Definitions.

§ 18.1

36 CFR Ch. I (7-1-01 Edition)

- 18.3 Applicability.
- 18.4 Notice/Publicity.
- 18.5 Determination of fair market rental value.
- 18.6 Advertised sealed bids.
- 18.7 Action at close of bidding.
- 18.8 Requests for proposals.
- 18.9 Lease terms and conditions.
- 18.10 Subleases and assignments.
- 18.11 Special requirements.
- 18.12 Ownership of improvements.
- 18.13 Exchanges for historic property.

AUTHORITY: Sec. 207, Pub. L. 96-515, 94 Stat. 2997 (16 U.S.C. 470h-3)

SOURCE: 47 FR 53369, Nov. 26, 1982, unless otherwise noted.

§ 18.1 Authority.

Section 207 of the National Historic Preservation Act Amendments of December 12, 1980, Pub. L. 96-515, 94 Stat. 2997, amends the National Historic Preservation Act of 1966, 16 U.S.C. 470 et seq., by adding a new section 111. Section 111(a) authorizes the Secretary of the Interior to lease historic property owned by the Department of the Interior or to exchange certain property owned by the Department of the Interior with certain comparable non-federally owned historic property in order to ensure the preservation of the historic property. Section 111(b) provides that proceeds from such leases of an historic property may be retained by the agency to defray the cost of administering, maintaining, repairing, or otherwise preserving the property or other properties on the National Register. The Secretary must consult with the Advisory Council on Historic Preservation before taking an action pursuant to this part.

§ 18.2 Definitions.

In addition to applicable definitions contained in 36 CFR part 1, the following definitions shall apply to this part:

- (a) *Adaptive Use* means the act or process of adapting a structure to a use other than that for which it was designed.
- (b) *Authorized Officer* means an officer or employee of the National Park Service designated to conduct leases or exchanges and delegated authority to execute all necessary documents including leases and deeds.

(c) *Fair Market Rental Value* means the most probable rent that the property would command if it were exposed on the open market for a period of time sufficient to attract a tenant who rents the property with full knowledge of the alternatives available to him on the market.

(d) *Fair Market Value* means the amount in cash, or terms reasonably equivalent to cash, for which in all probability, the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desired but was not obligated to buy.

(e) *Historic property* means any pre-historic or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register of Historic Places.

(f) *Lease* means a written contract by which use and possession in land and/or improvements is given to another person for a specified period of time and for rent and/or other consideration.

(g) *Leasehold interest* means a contract right in property consisting of the right to use and occupy real property by virtue of a lease agreement.

(h) *National Register* or *National Register of Historic Places* means the national register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture, maintained by the Secretary of the Interior under authority of section 101(a)(1) of the National Historic Preservation Act of 1966, as amended (80 Stat. 915, 16 U.S.C. 470 et seq. (1970 ed)).

(i) *Preservation* means the act or process of applying measures to sustain the existing terrain and vegetative cover of a site and the existing form, integrity, and material of a structure. It includes initial stabilization work, where necessary, as well as ongoing maintenance.

(j) *Preservation Maintenance* means the act or process of applying preservation treatment to a site or structure. It includes housekeeping and routine and cyclic work scheduled to mitigate wear and deterioration without altering the appearance of the resource, repair or replacement-in-kind of broken or worn-out elements, parts, or surfaces so as to keep the existing appearance and

function of the site of structure, and emergency stabilization work necessary to protect damaged historic fabric from additional damage.

(k) *Reconstruction* means the act or process of accurately reproducing a site or structure, in whole, or in part, as it appeared at a particular period of time.

(l) *Rehabilitation* means the act or process of returning a property to a state of utility through repair or alteration that makes possible an efficient contemporary use while preserving those portions or features of the property that are significant to its historical, architectural, and cultural values.

(m) *Restoration* means the act or process of recovering the general historic appearance of a site or the form and details of a structure, or portion thereof, by the removal of incompatible natural or human-caused accretions and the replacement of missing elements as appropriate. For structures, restoration may be for exteriors and interiors, and may be partial or complete.

[47 FR 53369, Nov. 26, 1982, as amended at 62 FR 30235, June 3, 1997]

§ 18.3 Applicability.

Section 111 of the Act is applicable to certain historic property under the jurisdiction of the National Park Service which the Director has determined would be adequately preserved by lease as well as to any other non-Federal historic property within the authorized boundaries of a unit of the National Park System which the National Park Service may wish to acquire through an exchange of federally owned property of equal value and/or equalizing monetary consideration, in order to ensure the preservation of the historic property. No lease or exchange shall be made under this part until a written determination is made by the Director that, pursuant to the National Park Service Planning Process, such use will be consistent with the purposes for which the park is established. No lease or exchange shall be made prior to consultation with the Advisory Council on Historic Preservation. These regulations shall not apply to objects or pre-historic structures.

§ 18.4 Notice/Publicity.

(a) When the Director has determined in accordance with these regulations that an appropriate interest in National Park Service property will be offered for lease, public notice of the opportunity shall be published at least twice in local and/or national newspapers of general circulation, appropriate trade publications, and distributed to interested persons. The notice shall be published not less than 60 days prior to the date of the bid opening or receipt of proposals and may be cancelled or withdrawn at any time. The notice shall contain, at a minimum: (1) A legal description of the property by public lands subdivision, metes-and-bounds, lot or by other suitable method, (2) a statement of the interest and term to be made available, designation of permissible uses, if applicable, including restrictions to be placed on the property, (3) whether the opportunity is for submission of a bid or a proposal as a result of a request for proposals, (4) when appropriate, a statement of the minimum acceptable bid below which the interest will not be conveyed, (5) an outline of bid or proposal procedures and a designation of the time and place for submitting bids or proposals, (6) an outline of lease procedures, requirements, and time schedule, (7) information regarding the character of the property and its location as deemed necessary, and (8) information on the physical condition of the property and where appropriate, work which may be required.

(b) All persons interested in an offering of property for lease shall be permitted and/or encouraged to make a complete inspection of such property including any available records, plans, specifications, or other such documents.

(c) Where a historic property has been designated for lease pursuant to this part, a condensed statement of the availability of property for lease shall be prepared and submitted for inclusion in the U.S. Department of Commerce publication "Commerce Business Daily" to: U.S. Department of Commerce (S-Synopsis), Room 1304, 433 West Van Buren Street, Chicago, Illinois 60607.

§ 18.5

§ 18.5 Determination of fair market rental value.

Fair market rental value of a property offered for lease will be prepared and reviewed by qualified professional real estate appraisers. Estimated fair market rental value will be prepared in accordance with professional standards and practices, taking into consideration all factors influencing value including special or unique provisions and/or limitations on the use of the property contained in the lease.

§ 18.6 Advertised sealed bids.

Leases will be offered through advertised sealed bids when the lease price is the only criterion for award. If a property is to be leased on a bid basis, and the advertisement/solicitation specifies a bid form, it will be made available upon request. Bids may be made by a principal or designated agent, either personally or by mail. Bids will be considered only if received at the place designated and prior to the hour fixed in the offering. If no bid form is specified, bids must be in writing, clearly identify the bidder, be signed by the bidder or designated agent, state the amount of the bid, and refer to the public notice. Bids conditioned substantially in ways not provided for by the notice will not be considered. Bids must be accompanied by certified checks, post office money orders, bank drafts, or cashier's checks made payable to the United States of America for the amount specified in the advertisement. The bid and payment must be enclosed in a sealed envelope upon which the prospective bidder shall write "Bid on interest in property of the National Park Service" and shall note the scheduled date the bids are to be opened. Payments will be refunded promptly to unsuccessful bidders. Bids will be opened publicly at the time and place specified in the notice of the offering. Bidders, their agents or representatives, and any other interested person may attend the bid opening. No bid in an amount less than the fair market rental value shall be considered. In the event two or more valid bids are received in the same amount, the award shall be made by a drawing by lot limited to the equal acceptable bids received.

36 CFR Ch. I (7-1-01 Edition)

§ 18.7 Action at close of bidding.

When a property is advertised for sealed bids, the bidder who is declared by the authorized officer to be the high bidder shall be bound by his bid and the regulations in this part to execute the lease, in accordance therewith, unless the bid is rejected. The Director reserves the right to reject any and all bids in his discretion when in the best interest of the Government.

§ 18.8 Requests for proposals.

(a) When the award of a lease will be based on criteria in addition to price, solicitation of offers will be made through requests for proposals and the Director may negotiate with the party or parties which, in the Director's judgment, makes the offer(s) which is susceptible to being the most advantageous to the National Park Service.

(b) Where significant investment would be required of a potential lessee, the Director shall issue a request for proposals describing the required preservation, preservation maintenance, restoration, reconstruction, adaptive use, or other specified work.

(c) Requests for proposals will be made available upon request to all interested parties and will allow a minimum of sixty days for proposals to be submitted unless a shorter period is necessary and made part of the public notice.

(d) All proposals received will be evaluated by the Director, and the proposal(s) considered to meet the criteria best shall be selected as the basis for negotiation to a final lease.

(e) The principal factors to be used in evaluating the proposal(s) shall be stated in the request for proposals and shall include as appropriate (1) price, (2) financial capability, (3) experience of the proposer, (4) conformance of the proposal(s) to the request for proposals, (5) impact of the proposal(s) on the historical significance and integrity of the site or structure(s) or, (6) any other factors that may be specified. When the request for proposal solicits lease proposals for use of sites or structures, the selection criteria may include assessment of the degree to which any use proposed is supportive of the purposes of the park.

(f) The Director may solicit from any offeror additional information, or written or verbal clarification of a proposal. The Director may choose to reject all proposals received at any time and resolicit or cancel the solicitation altogether in his discretion when in the best interest of the Government. Any material information made available to any offeror by the Director must be made available to all offerors, and will be available to the public upon request.

(g) The Director may, in his discretion, terminate negotiations at any time prior to execution of the lease without liability to any party when it is in the best interest of the Government.

§ 18.9 Lease terms and conditions.

(a) All leases shall contain such terms and conditions as the Director deems necessary to assure use of the property in a manner consistent with the purpose for which the area was authorized by Congress and to assure the preservation of the historic property.

(b) Leases granted or approved under this part shall be for the minimum term commensurate with the purpose of the lease that will allow the highest economic return to the Government consistent with prudent management and preservation practices, except as otherwise provided in this part. In no event shall a lease exceed a term of 99 years.

§ 18.10 Subleases and assignments.

(a) A sublease, assignment, amendment or encumbrance of any lease issued under this part may be made only with the written approval of the Director.

(b) A lease may be amended from time to time at the written request of either the lessee or the Government with written concurrence of the other party. Such amendments will be added to and become a part of the original lease.

(c) The lease may contain a provision authorizing the lessee to sublease the premises, in whole or in part, with approval of the Director, provided the uses prescribed in the original lease are not violated. Subleases so made shall not serve to relieve the sublessee from any liability nor diminish any super-

visory authority of the Director provided for under the approved lease.

(d) With the consent of the Director, the lease may contain provisions authorizing the lessee to encumber the leasehold interest in the premises for the purpose of borrowing capital for the development and improvement of the leased premises. The encumbrance instrument must be approved by the Director in writing. An assignment or sale of leasehold under an approved encumbrance can be made with the approval of the Director and the consent of the other parties to the lease, provided, however, that the assignee accepts and agrees in writing to be bound by all the terms and conditions of the lease. Such purchaser will be bound by the terms of the lease and will assume in writing all the obligations thereunder.

§ 18.11 Special requirements.

(a) All leases made pursuant to the regulations in this part shall be in the form approved by the Director and subject to his written approval.

(b) No lease shall be approved or granted for less than the present fair market rental value.

(c) Unless otherwise provided by the Director a satisfactory surety bond will be required in an amount that will reasonably assure performance of the contractual obligations under the lease. Such bond may be for the purpose of guaranteeing:

(1) Not less than one year's rental unless the lease contract provides that the annual rental or portion thereof shall be paid in advance.

(2) The estimated construction cost of any improvements by the lessee.

(3) An amount estimated to be adequate to insure compliance with any additional contractual obligations.

(d) The lessee will be required to secure and maintain from responsible companies insurance sufficient to indemnify losses connected with or occasioned by the use, activities, and operations authorized by the lease. Types and amounts of insurance coverage will be specified in writing and periodically reviewed by the National Park Service.

(e) The lessee shall save, hold harmless, and indemnify the United States of America, its agents and employees

§ 18.12

for losses, damages, or judgments and expenses on account of personal injury, death or property damage or claims for personal injury, death, or property damage of any nature whatsoever and by whomsoever made arising out of the activities of the lessee, his employees, subcontractors, sublessees, or agents under the lease.

(f) No lease shall provide the lessee a preference right of future leases.

(g) The lessee is responsible for any taxes and assessments imposed by Federal, State, and local agencies on lessee-owned property and interests.

(h) The lessee shall comply with local applicable ordinances, codes, and zoning requirements.

§ 18.12 Ownership of improvements.

(a) Capital improvements made to existing government-owned structures by the lessee or additional structures placed on the government-owned land by the lessee are the property of the United States. No rights for compensation of any nature exist for such property at the termination or expiration of the lease except as specified in the lease.

(b) Furniture, trade fixtures, chattel, and other personal property defined in the lease shall remain the property of the lessee upon termination or expiration of the lease and shall be removed within a reasonable time specified in the lease.

§ 18.13 Exchanges for historic property.

(a) After consultation with the Advisory Council on Historic Preservation, the Secretary, consistent with other legal requirements or other legal authorities, may exchange any property owned by the United States of America under his administration for any non-federally owned historic property located within the authorized boundaries of an existing unit of the National Park System, if he has determined that such exchange will adequately ensure preservation of the historic property and subject to the requirements of § 18.3 of this part.

(b) The exchange of the two properties must be on the basis of approximately equal fair market value established by the approved appraisal re-

36 CFR Ch. I (7-1-01 Edition)

ports of the agency. The Secretary may accept cash from or pay cash to the grantor in an exchange, in order to equalize the values of the properties exchanged.

(c) Title to the non-Federal property to be received in exchange must be free and clear of encumbrances and/or liens.

(d) Prior to consummation of any exchange, the Secretary shall evaluate the Federal land to be exchanged, and shall reserve such interests as necessary to protect the purposes for which the unit of the National Park System was established. The grantor of property to the Federal Government may reserve only such rights as are compatible with the purposes for which it is being acquired as determined by the Secretary. Appraisal of fair market values must reflect any reservations or restrictions.

PART 20—ISLE ROYALE NATIONAL PARK; COMMERCIAL FISHING

Sec.

20.1 Definitions.

20.2 Permits; conditions.

20.3 Maximum number of permittees.

20.4 Revocation of permits; appeal.

AUTHORITY: Secs. 1-3, 39 Stat. 535, as amended, sec. 3, 56 Stat. 133, secs. 1, 2, 67 Stat. 495, 496; 16 U.S.C. 1, 1b, 1c, 2, 3, 408k.

SOURCE: 24 FR 11055, Dec. 30, 1959, unless otherwise noted.

§ 20.1 Definitions.

As used in this part:

(a) *Park* means Isle Royale National Park.

(b) *Permittee* includes all persons engaged in commercial fishing from bases in the Park, except those life lessees who were engaged in such occupation at the date of the issuance of their leases.

[24 FR 11055, Dec. 30, 1959, as amended at 60 FR 55791, Nov. 3, 1995; 62 FR 30235, June 3, 1997]

§ 20.2 Permits; conditions.

Annual, revocable special use permits authorizing the use of Government-owned structures and facilities in the Park as bases for commercial fishing in the waters contiguous to the Park may be granted by the Director of