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Deputy or Associate Director. The deciding official must prepare a written decision on the appeal, taking into account the content of the appeal and other available information.

(c) If the appeal results in a determination by the Director that the 1965 Act concession contract in question makes express reference to a renewal preference under section 5 of the 1965 Act, the 1998 Act's repeal of section 5 of the 1965 Act was inconsistent with the terms and conditions of the concession contract, and that the holder of the concession contract in these circumstances is entitled to a renewal preference by operation of law, the Director will permit the concessioner to exercise a renewal preference for the contract subject to and in accordance with the otherwise applicable right of preference terms and conditions of this part, including, without limitation, the requirement for submission of a responsive proposal pursuant to the terms of an applicable prospectus. The Director, similarly, will permit any holder of a 1965 Act concession contract that a court of competent jurisdiction determines in a final order is entitled to a renewal preference, for any reason, to exercise a right of preference in accordance with the otherwise applicable requirements of this part, including, without limitation, the requirement for submission of a responsive proposal pursuant to the terms of an applicable prospectus.

§ 51.103 Severability.

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

Subpart M—Information Collection

§ 51.104 Has OMB approved the collection of information?

The Office of Management and Budget (OMB) reviewed and approved the information collection requirements contained in this Part and assigned OMB Control No. 1024-0029. We use this information to administer the National Park Service concessions program, including solicitation, award, and administration of concession contracts. A Federal agency may not conduct or

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sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. You may send comments on the information collection requirements to the Information Collection Clearance Officer, National Park Service, 1849 C Street NW., (2601), Washington, DC 20240.

[79 FR 58263, Sept. 29, 2014]

PART 52—VISITOR EXPERIENCE IMPROVEMENTS AUTHORITY CONTRACTS

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AUTHORITY: 54 U.S.C. 101931–101938.

SOURCE: 90 FR 5646, Jan. 17, 2025, unless otherwise noted.

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 visi-

tors 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.

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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

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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

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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 Direc-

tor 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

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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 conclu-

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sion 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.

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(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.