

## National Park Service, Interior

## § 51.36

### **§ 51.29 How will I know when a preferred offeror exists?**

If the Director has determined that a preferred offeror exists for a qualified concession contract under this part, the Director will identify the preferred offeror in the applicable prospectus and describe the preferred offeror's right of preference.

### **§ 51.30 What must a preferred offeror do before it may exercise a right of preference?**

A preferred offeror must submit a responsive proposal pursuant to the terms of an applicable prospectus for a qualified concession contract if the preferred offeror wishes to exercise a right of preference.

### **§ 51.31 What happens if a preferred offeror does not submit a responsive proposal?**

If a preferred offeror fails to submit a responsive proposal, the offeror may not exercise a right of preference. The concession contract will be awarded to the offeror submitting the best responsive proposal.

### **§ 51.32 What is the process if the Director determines that the best responsive proposal was not submitted by a preferred offeror?**

If the Director determines that a proposal other than the responsive proposal submitted by a preferred offeror is the best proposal submitted for a qualified concession contract, then the Director must advise the preferred offeror of the better terms and conditions of the best proposal and permit the preferred offeror to amend its proposal to match them. An amended proposal must match the better terms and conditions of the best proposal as determined by the Director. If the preferred offeror duly amends its proposal within the time period allowed by the Director, and the Director determines that the amended proposal matches the better terms and conditions of the best proposal, then the Director must select the preferred offeror for award of the contract upon the amended terms and conditions, subject to other applicable requirements of this part.

### **§ 51.33 What if a preferred offeror does not timely amend its proposal to meet the terms and conditions of the best proposal?**

If a preferred offeror does not amend its proposal to meet the terms and conditions of the best proposal within the time period allowed by the Director, the Director will select for award of the contract the offeror that submitted the best responsive proposal.

### **§ 51.34 What will the Director do if a selected preferred offeror does not timely execute the new concession contract?**

If a selected preferred offeror fails to execute the concession contract in the time period specified by the Director, the Director either will select for award of the concession contract the offeror that submitted the best responsive proposal, or will cancel the solicitation and may resolicit the concession contract but only without recognition of a preferred offeror or right of preference.

### **§ 51.35 What happens to a right of preference if the Director receives no responsive proposals?**

If the Director receives no responsive proposals, including a responsive proposal from a preferred offeror, in response to a prospectus for a qualified concession contract for which a preferred offeror exists, the Director must cancel the solicitation and may resolicit the concession contract or take other appropriate action in accordance with this part. No right of preference will apply to a concession contract resolicited under this section unless the contract is resolicited upon terms and conditions materially more favorable to offerors than those contained in the original contract.

## **Subpart F—Determining a Preferred Offeror**

### **§ 51.36 What conditions must be met before the Director determines that a concessioner is a preferred offeror?**

A concessioner is a preferred offeror if the Director determines that the following conditions are met:

### §51.37

(a) The concessioner was a satisfactory concessioner during the term of its concession contract as determined under this part;

(b) The applicable new contract is a qualified concession contract as determined under this part; and

(c) If applicable, the concessioner's previous concession contract was an outfitter and guide concession contract as determined under this part.

#### **§51.37 How will the Director determine that a new concession contract is a qualified concession contract?**

A new concession contract is a qualified concession contract if the Director determines that:

(a) The new concession contract provides for the continuation of the visitor services authorized under a previous concession contract. The visitor services to be continued under the new contract may be expanded or diminished in scope but, for purposes of a qualified concession contract, may not materially differ in nature and type from those authorized under the previous concession contract; and either

(b) The new concession contract that is to replace the previous concession contract is estimated to result in, as determined by the Director, annual gross receipts of less than \$500,000 in the first 12 months of its term; or

(c) The new concession contract is an outfitter and guide concession contract as described in this part.

#### **§51.38 How will the Director determine that a concession contract is an outfitter and guide concession contract?**

The Director will determine that a concession contract is an outfitter and guide concession contract if the Director determines that:

(a) The concession contract solely authorizes or requires (except for park area access purposes) the conduct of specialized outdoor recreation guide services in the backcountry of a park area; and

(b) The conduct of operations under the concession contract requires employment of specially trained and experienced guides to accompany park visitors who otherwise may not have the skills and equipment to engage in the

### 36 CFR Ch. I (7-1-12 Edition)

activity and to provide a safe and enjoyable experience for these visitors.

#### **§51.39 What are some examples of outfitter and guide concession contracts?**

Outfitter and guide concession contracts may include, but are not limited to, concession contracts which solely authorize or require the guided conduct of river running, hunting (where otherwise lawful in a park area), fishing, horseback, camping, and mountaineering activities in the backcountry of a park area.

#### **§51.40 What are some factors to be considered in determining that outfitter and guide operations are conducted in the backcountry?**

Determinations as to whether outfitter and guide operations are conducted in the backcountry of a park area will be made on a park-by-park basis, taking into account the park area's particular geographic circumstances. Factors that generally may indicate that outfitter and guide operations are conducted in the backcountry of a park area include, without limitation, the fact that:

(a) The operations occur in areas remote from roads and developed areas;

(b) The operations are conducted within a designated natural area of a park area;

(c) The operations occur in areas where search and rescue support is not readily available; and

(d) All or a substantial portion of the operations occur in designated or proposed wilderness areas.

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#### **§51.41 If the concession contract grants a compensable interest in real property improvements, will the Director find that the concession contract is an outfitter and guide concession contract?**

The Director will find that a concession contract is not an outfitter and guide contract if the contract grants any compensable interest in real property improvements on lands owned by the United States within a park area.