

§ 18.3

36 CFR Ch. I (7–1–04 Edition)

(d) *Concession contract* has the meaning stated in 36 CFR part 51.

(e) *Fair market value rent* means the most probable rent, as of a specific date, in cash or in terms equivalent to cash, for which the property to be leased, under the terms and conditions of the lease, should rent for its highest and best permitted use after reasonable exposure in a competitive market under all conditions requisite to a fair leasing opportunity, with the lessor and the lessee each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress. Determinations of fair market value rent under this part are to be made taking into account the considerations stated in § 18.5.

(f) *Historic building* means a building or buildings located within the boundaries of a park area if the building is part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

(g) *Historic land* means land located within the boundaries of an historic property.

(h) *Historic property* means building(s) and land located within the boundaries of a park area if the building(s) and land are part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

(i) *Land* means unimproved real property.

(j) *Lease* means a written contract entered into under the authority of this part through which use and possession of property is granted to a person for a specified period of time.

(k) *Non-historic building* is a building (or buildings) and its associated property located within the boundaries of a park area but not part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

(l) *Non-historic land* means land located within the boundaries of a park area that is not associated property and is not part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

(m) *Non-historic property* means building(s) and/or land that are located

within the boundaries of a park area but are not part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

(n) *Park area* means a unit of the national park system.

(o) *Property* means both historic and non-historic property that is located within the boundaries of a park area and is federally owned or administered.

(p) *Request* for bids refers to the lease bid process described in § 18.7.

(q) *Request for proposals* refers to the lease proposal process described in § 18.8.

(r) *Responsive bid or proposal* means a timely submitted bid or proposal that meets the material requirements of a request for bids or a request for proposals.

§ 18.3 What property may be leased?

(a) *In general.* The Director may lease any property (except non-historic land) under this part if the Director makes the determinations required by § 18.4.

(b) *Non-historic land.* Non-historic land may not be leased under this part. Certain non-historic land is eligible for leasing under 36 CFR part 17.

§ 18.4 What determinations must the Director make before leasing property?

Before leasing property in a park area under this part, the Director must determine that:

(a) The lease will not result in degradation of the purposes and values of the park area;

(b) The lease will not deprive the park area of property necessary for appropriate park protection, interpretation, visitor enjoyment, or administration of the park area;

(c) The lease contains such terms and conditions as will assure the leased property will be used for activity and in a manner that are consistent with the purposes established by law for the park area in which the property is located;

(d) The lease is compatible with the programs of the National Park Service;

(e) The lease is for rent at least equal to the fair market value rent of the leased property as described in § 18.5;

(f) The proposed activities under the lease are not subject to authorization through a concession contract, commercial use authorization or similar instrument; and

(g) If the lease is to include historic property, the lease will adequately insure the preservation of the historic property.

§ 18.5 May property be leased without receiving fair market value rent?

Property may be leased under this part only if the lease requires payment of rent to the government equal to or higher than the property's fair market value rent. The determination of fair market value rent shall take into account:

(a) Any restrictions on the use of the property or terms of the lease that limit the value and/or the highest and best use of the property; and

(b) Any requirements under the lease for the lessee to restore, rehabilitate or otherwise improve the leased property.

§ 18.6 Are there limitations on the use of property leased under this part?

(a) A lease issued under this part may authorize the use of the leased property for any lawful purpose, subject to the determinations required by § 18.4 and the limitations on activities set forth in paragraph (b) of this section.

(b) Unless otherwise authorized by law, a lease issued under this part may not authorize the lessee to engage in activities that are subject to authorization through a concession contract, commercial use authorization or similar instrument. Proposed lease activities are subject to authorization under a concession contract if the Director determines in accordance with 36 CFR part 51 and park area planning documents and related guidelines and policies that the proposed activities meet applicable requirements for issuance of a concession contract. Proposed activities are subject to authorization under a commercial use authorization if the Director determines in accordance with park area planning documents and related guidelines and policies that the proposed activities meet applicable requirements for issuance of a commercial use authorization.

§ 18.7 How are lease proposals solicited and selected if the Director issues a Request for Bids?

(a) If the amount of the rent is the only criterion for award of a lease, the Director may solicit bids through issuance of a request for bids as described in this section. If historic property is to be leased under the authority of this section, the Director must comply with 36 CFR part 800 (commenting procedures of the Advisory Council on Historic Preservation) at an appropriate time during the leasing process.

(b) A request for bids under this section shall be advertised by public notice published at least twice in local and/or national newspapers of general circulation. The notice shall provide at least a thirty (30) day period from the last date of publication for the submission of sealed bids. The notice will provide necessary information to prospective bidders. It may specify a minimum rent and/or require submission of a rent deposit or advance rent payment. Bids will be considered only if timely received at the place designated in the request. Bids must be in the form specified by the Director, or, if no form is specified, a bid must be in writing, signed by the bidder or authorized representative, state the amount of the bid, and refer to the applicable public notice. If the notice requires submission of a rent deposit or advance rent payment, the bids must include the required funds in the form of a certified check, post office money order, bank drafts, or cashier's checks made out to the United States of America. The bid (and payment where applicable) must be enclosed in a sealed envelope upon which the bidder shall write: "Bid on lease of property of the National Park Service" and shall note the date the bids are to be opened.

(c) Bids will be opened publicly by the Director at a time and place specified in the public notice. Bidders or their representatives may attend the bid opening. The bidder submitting a responsive bid offering the highest rent will be selected for award of the lease (subject to a determination of financial