

## **TITLE 14: DEPARTMENT OF PARKS AND RECREATION**

### **Notice of Proposed Rulemaking**

The Department of Parks and Recreation (DPR) proposes to amend the regulation as described below after considering all comments, objections and recommendations regarding the proposed action.

#### **PROPOSED REGULATORY ACTION**

DPR proposes to amend Section 4400, Title 14, Division 3, Chapter 3 of the California Code of Regulations. This regulation amendment concerns the administrative procedures that must be followed in order to file a protest against the awarding of a concession contract in connection with either an invitation to bid or request for proposal process.

#### **PUBLIC HEARING**

DPR has not scheduled a public hearing on this proposed action. However, DPR will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

#### **WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to DPR. The written comment period closes at 5 p.m. on July 28, 2003. DPR will consider only comments received by that time at the DPR office listed below. Submit comments to:

John Shelton  
Concessions and Reservations Division  
California Department of Parks and Recreation  
P.O. Box 942896  
Sacramento, CA 94296

#### **AUTHORITY AND REFERENCE**

Public Resources Code section 5003 authorizes DPR to adopt the proposed amendment to the regulation, which would implement, interpret or make specific the protest procedure for contract awards pursuant to Public Resources Code section 5080.03, et seq.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The purpose of the regulation amendment is to make the concession contract process more fair and understandable. It would accomplish this goal by clarifying the administrative protest procedure in connection with the request for proposal process used by DPR to award concession contracts, and clarifying the time period in which a protest must be filed against the awarding of contracts in connection with either a request for proposal or invitation to bid process.

Public Resources Code section 5080.03 authorizes DPR to enter into contracts for the construction, maintenance and operation of concessions within units of the state park system. DPR may award contracts for concessions occupying any portion of the state park system for a period of more than two years to the best responsible person or entity submitting a proposal in response to a DPR request for proposal pursuant to Public Resources Code section 5080.23, or to the best responsible bidder responding to a DPR invitation to bid pursuant to Public Resources Code section 5080.06.

The current version of Section 4400 of the regulations only provides a protest procedure for a contract award in connection with the invitation to bid process because DPR did not begin using the alternative request for proposal process until after the regulation was adopted. The proposed amendment would make the same administrative protest procedure applicable to both the request for proposal and the invitation to bid processes.

Opening of the proposals/bids: The current regulation also creates confusion by requiring protests to be filed within 10 days after the opening of bids. However, more than 10 days is usually required to evaluate proposals or bids after they are opened. As such, the 10-day period usually expires before the winning contract has been determined. Moreover, the Department's evaluation, conclusion and the competing proposals/bids are not made public until a notice of intent to award a contract is issued. This notice is rarely, if ever, issued within ten (10) days of the initial opening of the proposals/bids. The amendment will clarify the procedures by requiring that protests be filed within 10 days after the winning proposal or bid is announced by the issuing of a notice of intent to award a contract. This assures that protesters will first be able to assess the winning proposal or bid before the deadline for filing a protest has passed.

## **MATERIAL INCORPORATED BY REFERENCE**

This regulation incorporates no materials by reference.

## **DISCLOSURES REGARDING THE PROPOSED ACTION**

DPR has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None

Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other non-discretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or businesses: DPR is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Amendment of these regulations will not:

Create or eliminate jobs within California;

Create new businesses or eliminate existing businesses within California;

Affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

## **SMALL BUSINESS DETERMINATION**

DPR has determined that the proposed regulation amendment affects small business.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), DPR must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to the affected private persons than the proposed action.

DPR invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation amendment during the written comment period.

## **CONTACT PERSONS**

Inquiry concerning the proposed administrative action and the substance of the proposed regulations, as well as requests for copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based may be directed to:

John Shelton  
Concessions and Reservations Division  
California Department of Parks and Recreation  
P.O. Box 942896  
Sacramento, CA 94296  
Telephone: (916) 653-7733

The backup person for these inquiries is:

John Hillerman, Concessions and Reservations Division  
California Department of Parks and Recreation  
P.O. Box 942896  
Sacramento, CA 94296  
Telephone: (916) 653-7733

Questions on the substance of the proposed regulations may be directed to Mr. Shelton.

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Mr. Hillerman at the above address.

## **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION**

DPR will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the following address:

California Department of Parks and Recreation  
Concessions and Reservations Division  
1416 9<sup>th</sup> Street, Room 1442-13  
Sacramento, CA 95814

As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the initial statement of reasons. Copies may be obtained by contacting John Hillerman at the address or phone number listed above under “Contact Persons.”

## **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After the written comment period or the holding the hearing, if requested, and considering all timely and relevant comments received, DPR may adopt the proposed regulation substantially as described in this notice. If DPR makes modifications which are sufficiently related to the originally proposed text, it will make the modified text, with the changes clearly indicated, available to the public for at least 15 days before DPR adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Mr. Hillerman at the address indicated above. DPR will accept written comments on the modified regulations for 15 days after the date on which they are made available to the public.

## **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Mr. Hillerman at the address listed above under "Contact Persons."

## **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons and the text of the regulation in underline and strikeout can be accessed through our website at [www.parks.ca.gov](http://www.parks.ca.gov).

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