

Forest Service, USDA

§ 223.84

(3) Notice that the prospectus referred to in paragraph (a)(5) of this section contains additional information concerning the options to have all permanent roads constructed by the Forest Service.

(c) When timber or other forest products are offered for preferential bidding in accordance with the Small Business Act, as amended, the advertisement shall state that the offering is set-aside for competitive bidding by small business concerns.

[50 FR 32696, Aug. 14, 1985, as amended at 71 FR 523, Jan. 4, 2006; 71 FR 11510, Mar. 8, 2006]

§ 223.83 Contents of prospectus.

(a) A timber sale prospectus shall specify, as a minimum:

(1) The minimum acceptable stumpage or other unit prices and the amount or rate of any additional required deposits.

(2) The amount of bid guarantee which must accompany each bid.

(3) The amount of cash deposit or down payment to be made promptly by the successful bidder.

(4) The location and area of the sale, including harvest acreage.

(5) The estimated volumes, quality, size or age class of timber.

(6) A description of special logging requirements for the sale.

(7) The status of marking at time of advertisement.

(8) The method of bidding which will be used.

(9) The contract form to be used.

(10) The estimated deposits for reforestation and stand improvement work.

(11) The contract termination date and normal operating period.

(12) The date and amount of periodic payments which are to be made.

(13) The discount of payment rates for early harvest, if appropriate.

(14) The amount of performance bond required.

(15) The road standards for specified roads to be constructed.

(16) The estimated road construction cost and the estimated public works construction cost.

(17) For deficit sales:

(i) An estimate of the difference between fair market value and advertised value, that is, the amount by which the

advertised value exceeds the appraised value.

(ii) The amount of Forest Service funds or materials to be used to offset the deficit.

(18) Status of financial assistance available to small business purchasers.

(19) Notification of preferential award to small business firms and certification requirements for set-aside sales.

(20) Notification of log export and substitution restrictions.

(21) Notification of Equal Employment Opportunity compliance review requirements.

(22) General or special information concerning the sale which are deemed appropriate to furnish sufficient information to prospective purchasers to warrant further investigation.

(b) For each advertisement which extends to small concerns the option to have all permanent roads constructed by the Forest Service, the prospectus shall also include:

(1) The road standards applicable to construction of permanent roads or a reference to the source of such information.

(2) The date of final completion for all permanent roads.

(3) A statement explaining how the Forest Service intends to perform road construction by force account or contract, if the high bidder elects Forest Service construction.

(4) The maximum period for which timber sale contract award will be delayed while the Forest Service seeks a satisfactory construction bid. The period stated shall not exceed 120 days unless the Regional Forester approves a longer period.

[50 FR 32696, Aug. 14, 1985, as amended at 71 FR 523, Jan. 4, 2006; 71 FR 11510, Mar. 8, 2006]

§ 223.84 Small business bid form provisions on sales with specified road construction.

For each sale described in § 223.82(b), the bid form must include provision for a small business concern:

(a) To elect road construction by the Forest Service and where such election is made;

(b) To certify as to small business status, and

(c) To indicate knowledge—

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(1) Of the road construction completion date,

(2) That the Forest Service expects to contract for road construction with a third party,

(3) That the timber sale contract will not be awarded unless a satisfactory road construction bid is received or, if the Forest Service fails to receive such a bid within a maximum period stated in the advertisement, the bidder agrees to perform road construction,

(4) That the Forest Service may extend the maximum award delay time by the amount of time needed to confirm the bidder's size status or by any time in excess of 40 days from timber sale bid opening needed to begin solicitation of construction bids, and

(5) That if the Forest Service extends the maximum award delay period because solicitation of the road contract is delayed, the bidder may withdraw his bid without penalty.

[42 FR 28252, June 2, 1977. Redesignated at 49 FR 2761, Jan. 23, 1984. Redesignated and amended at 50 FR 32696, Aug. 14, 1985]

§ 223.85 Noncompetitive sale of timber.

(a) Forest officers may sell, within their authorization, without further advertisement, at not less than appraised value, any timber previously advertised for competitive bids but not sold because of lack of bids and any timber on uncut areas included in a contract which has been terminated by abandonment, cancellation, contract period expiration, or otherwise if such timber would have been cut under the contract. This authority shall not be utilized if there is evidence of competitive interest in the product.

(b) Extraordinary conditions, as provided for in 16 U.S.C. 472a(d), are defined to include the potential harm to natural resources, including fish and wildlife, and related circumstances arising as a result of the award or release of timber sale contracts pursuant to section 2001(k) of Public Law 104-19 (109 Stat. 246). Notwithstanding the provisions of paragraph (a) of this section or any other regulation in this part, for timber sale contracts that have been or will be awarded or released pursuant to section 2001(k) of Public Law 104-19 (109 Stat. 246), the Secretary of Agriculture may allow

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forest officers to, without advertisement, modify those timber sale contracts by substituting timber from outside the sale area specified in the contract for timber within the timber sale contract area.

(c) Extraordinary conditions, as provided for in 16 U.S.C. 472a(d), includes those conditions under which contracts for the sale or exchange of timber or other forest products must be suspended, modified, or terminated under the terms of such contracts to prevent environmental degradation or resource damage, or as the result of administrative appeals, litigation, or court orders. Notwithstanding the provisions of paragraph (a) of this section or any other regulation in this part, when such extraordinary conditions exist on sales not addressed in paragraph (b) of this section, the Secretary of Agriculture may allow forest officers to, without advertisement, modify those contracts by substituting timber or other forest products from outside the contract area specified in the contract for timber or forest products within the area specified in the contract. When such extraordinary conditions exist, the Forest Service and the purchaser shall make good faith efforts to identify replacement timber or forest products of similar volume, quality, value, access, and topography. When replacement timber or forest products agreeable to both parties is identified, the contract will be modified to reflect the changes associated with the substitution, including a rate redetermination. Concurrently, both parties will sign an agreement waiving any future claims for damages associated with the deleted timber or forest products, except those specifically provided for under the contract up to the time of the modification. If the Forest Service and the purchaser cannot reach agreement on satisfactory replacement timber or forest products, or the proper value of such material, either party may opt to end the search. Replacement timber or forest products must come from the same National Forest as the original contract. The term National Forest in this paragraph refers to an administrative unit headed by a single Forest Supervisor. Only timber or forest products for which a decision