

## § 223.85

(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

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authorizing its harvest has been made and for which any applicable appeals or objection process has been completed may be considered for replacement pursuant to this paragraph. The value of replacement timber or forest products may not exceed the value of the material it is replacing by more than \$10,000, as determined by standard Forest Service appraisal methods.

[61 FR 14621, Apr. 3, 1996, as amended at 71 FR 34826, June 16, 2006; 72 FR 59190, Oct. 19, 2007]

### § 223.86 Bid restriction on resale of noncompleted contract.

(a) Except as otherwise provided in this section, no bid will be considered in the resale of timber remaining from any uncompleted timber sale contract from any person, or from an affiliate of such person, who failed to complete the original contract:

(1) Because of termination for purchaser's branch or; or

(2) Through failure to cut designated timber on portions of the sale area by the termination date, unless acceptance of such bid is determined to be in the public interest.

(b) The no bid restriction in the preceding paragraph:

(1) Shall only apply when 50 percent or more of the timber included in the resale is timber remaining from the uncompleted contract and the resale is advertised within 3 years of the date the uncompleted contract terminated;

(2) When imposed because of failure to cut designated timber on portions of the sale area by the termination date, shall not apply to resales of timber for which the original contract was awarded prior to April 30, 1972, unless the contract is extended thereafter; and

(3) Shall not apply to:

(i) Resales of timber within a sustained yield unit unless competition may be invited under the policy statement for the unit,

(ii) Resales of timber on contract which would ordinarily have been awarded prior to April 30, 1972, if award was delayed through no fault of the purchaser, and

(iii) Resales of timber on contracts not extended because of environmental considerations.

(c) Where a third-party agreement has been approved in accordance with § 223.114; the original purchaser shall not be affected by this section unless such purchaser is an affiliate of the third party.

(d) As used in this section, *person* includes any individual, corporation, company, association, firm, partnership, society, joint stock company, or other business entity or the successor in interest of any of the foregoing business entities. A person is an *affiliate* when either directly or indirectly:

(1) A person controls or has the power to control the other, or

(2) A third person or persons control or has the power to control both.

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

### § 223.87 Requirements of bidders concerning exports.

In order to have a bid considered responsive for a sale of timber from National Forest System lands, each bidder must certify that the bidder is eligible to purchase timber from National Forest System lands consistent with the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) and its implementing regulations at 36 CFR part 223, and that the bidder's timber purchase and export activities are in compliance with the timber export and substitution provisions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) and its implementing regulations at 36 CFR part 223.

[60 FR 46920, Sept. 8, 1995]

### § 223.88 Bidding methods.

(a) Competitive sales of National Forest timber shall be offered through either sealed or oral auction bidding. The method chosen for each sale will:

(1) Insure open and fair competition,

(2) Insure that the Federal Government receives not less than fair market value for the public resource,

(3) Consider the economic stability of communities whose economies are dependent upon National Forest timber, and

(4) Be consistent with the objectives of the National Forest Management