§ 600.1009 Bids.

(a) Each invitation to bid, bid, bid acceptance, reduction contract, and bidder—or any other party in any way affected by any of the foregoing—under this subpart is subject to the terms and conditions in this section:

(1) Each invitation to bid constitutes the entire terms and conditions of a reduction contract under which:

(i) Each bidder makes an irrevocable offer to the United States of fishing capacity for reduction, and

(ii) NMFS accepts or rejects, on behalf of the United States, each bidder's offer;

(2) NMFS may, at any time before the bid expiration date, accept or reject any or all bids;

(3) For a financed program in which bidding results do not conform to the fishing capacity reduction specifications, NMFS' acceptance of any bid is subject to the condition that the industry fee system necessary to repay the reduction loan is subsequently approved by a successful post-bidding referendum conducted under § 600.1010. Approval or disapproval of the industry fee system by post-bidding referendum is an event that neither the United States nor the bidders can control. Disapproval of the industry fee system by an unsuccessful post-bidding referendum fully excuses both parties from any performance and fully discharges all duties under any reduction contract;

(4) For a financed program in one reduction fishery that is being conducted under appropriate implementation regulations simultaneously with another financed program in another reduction fishery, where the acceptance of bids for each financed program is conditional upon successful post-bidding referenda approving industry fee systems for both financed programs, NMFS' acceptance of all bids is, in addition to any condition under paragraph (a)(3) of this section, also subject to the additional conditions that both referenda approve the industry fee systems required for both financed programs—all as otherwise provided in paragraph (a)(3) of this section;

(5) Upon NMFS' acceptance of the bid and tender of a reduction payment, the bidder consents to:

(b) NMFS may, at any time before the bid expiration date, accept or reject any or all bids.
(i) The revocation, by NMFS, of any reduction permit, and
(ii) Where the program also involves the withdrawal of reduction vessels from fishing:
   (A) Title restrictions imposed by the U.S. Coast Guard on any reduction vessel that is Federally documented to forever prohibit and effectively prevent any future use of the reduction vessel for fishing:
      (1) In any area subject to the jurisdiction of the United States, or any state, territory, commonwealth, or possession of the United States, or
      (2) On the high seas, or
      (3) In the waters of a foreign nation; or
   (B) Scrapping of all reduction vessels involved in a fishing capacity reduction program, unless the reduction program vessel has been certified by the Secretary, and the requirements established under §600.1002(c) are met. Where reduction vessel scrapping is involved and the reduction vessel’s owner does not comply with the owner’s obligation under the reduction contract to scrap the reduction vessel, the Secretary may take such measures as necessary to cause the reduction vessel’s prompt scrapping. The scrapping will be at the reduction vessel owner’s risk and expense. Upon completion of scrapping, NMFS will take such action as may be necessary to recover from the reduction vessel owner any cost, damages, or other expense NMFS incurred in the scrapping of the reduction vessel.
(6) Money damages not being an adequate remedy for a bidder’s breach of a reduction contract, the United States is, in all particulars, entitled to specific performance of each reduction contract. This includes, but is not limited to, the scrapping of the reduction vessel;
(7) Any reduction payment is available, upon timely and adequately documented notice to NMFS, to satisfy liens, as allowed by law, against any reduction permit/and or reduction vessel; provided, however, that:
   (i) No reduction payment to any bidder either relieves the bidder of responsibility to discharge the obligation which gives rise to any lien or relieves any lien holder of responsibility to protect the lien holder’s interest,
   (ii) No reduction payment in any way gives rise to any liability of the United States for the obligation underlying any lien,
   (iii) No lien holder has any right or standing, not otherwise provided by law, against the United States in connection with the revocation of any reduction permit or the title restriction or scrapping of any reduction vessel under this subpart, and
   (iv) This subpart does not provide any lien holder with any right or standing to seek to set aside any revocation of any reduction permit or the title restriction or scrapping of any reduction vessel for which the United States made, or has agreed to make, any reduction payment. A lien holder is limited to recovery against the holder of the reduction permit or the owner of the reduction vessel as otherwise provided by law; and
(8) Each invitation to bid may specify such other terms and conditions as NMFS believes necessary to enforce specific performance of each reduction contract or otherwise to ensure completing each program. This includes, but is not limited to, each bidder’s certification, subject to the penalties in §600.1017, of the bidder’s full authority to submit each bid and to dispose of the property involved in the bid in the manner contemplated by each invitation to bid.
(b) NMFS will not invite bids for any program until NMFS determines that:
(1) Any necessary reduction amendment is fully and finally approved and all provisions except those dependent on the completion of reduction are implemented;
(2) The final implementation plan is adopted and the final implementation regulations are issued;
(3) All required program funding is approved and in place, including all Federal appropriation and apportionment authority;
(4) Any reduction loan involved is fully approved;
(5) Any non-Federal funding involved is fully available at the required time for NMFS disbursement as reduction payments; and
(6) All other actions necessary to disburse reduction payments, except for
§ 600.1010 Referenda.

(a) Referendum success. A referendum is successful if at least a majority of the permit holders in the fishery who participate in the fishery cast ballots in favor of an industry fee system.

(b) Pre-bidding referendum—(1) Initial referendum. An initial pre-bidding referendum shall be conducted for each financed program. The business plan shall, subject to this subpart, determine the chronological relationship of the initial pre-bidding referendum to other pre-bidding aspects of the reduction process sequence. The initial pre-bidding referendum shall be based on the fishing capacity reduction specifications. If the initial pre-bidding referendum precedes the adoption of any necessary reduction amendment, the initial pre-bidding referendum shall also be based on the reduction amendment specifications. If the initial pre-bidding referendum follows the adoption of any necessary reduction amendment, the initial pre-bidding referendum shall also be based on the adopted reduction amendment;

(2) Successful initial pre-bidding referendum. If the initial pre-bidding referendum is successful, the reduction process will proceed as follows:

(i) If the initial pre-bidding referendum follows reduction amendment adoption, no second pre-bidding referendum shall be conducted,

(ii) If the initial pre-bidding referendum precedes reduction amendment adoption, a second pre-bidding referendum shall be conducted if, in NMFS' judgment, the reduction amendment subsequently adopted differs, in any respect materially affecting the borrower's reduction investment in the program and the borrower's ability to repay the reduction loan, from the reduction amendment specifications upon which the initial pre-bidding referendum successfully occurred. The sole purpose of any second pre-bidding referendum shall be to determine whether the voters authorize an industry fee system despite any such difference between the reduction amendment specifications and a subsequently adopted reduction amendment.

(3) Unsuccessful initial pre-bidding referendum. If the initial pre-bidding referendum is unsuccessful, the reduction process will either cease or NMFS may suspend the process pending an appropriate amendment of the business plan and the request.

(c) Post-bidding referendum. A post-bidding referendum shall occur only if, in NMFS' judgment, the result of bidding under § 600.1009 does not conform, in any material respect, to the fishing capacity reduction specifications and such result justifies, in NMFS' judgment, conducting a post-bidding referendum. Bidding that results in reducing fishing capacity in any amount not less than the minimum fishing capacity reduction amount for any reduction

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