

Bureau of Land Management, Interior

§ 2803.1-3

by December 31 for each ensuing calendar year based on the schedules published from time to time as necessary in the FEDERAL REGISTER.

(6) Also, the right-of-way holder must submit a certified statement by October 15 of each year listing tenants in the facility and the category of use for each tenant as of September 30 of that year, and pay 25 percent of the schedule rent for the category of use. Tenants occupying space in the facility under terms of the holder's right-of-way authorization will not be required to have a separate BLM authorization.

(7) Other methods may be used to set rental payments for communication uses when the authorized officer determines one of the following:

(i) The holder is eligible for a waiver or reduction in rent in accordance with § 2803.1-2(b)(2);

(ii) Payment of the rent will cause undue hardship under § 2803.1-2(b)(2)(iv);

(iii) The original right-of-way authorization has been or will be issued pursuant to a competitive bidding process;

(iv) The State Director concurs in a determination made by the authorized officer that the expected rent exceeds the schedule rent by 5 times, or the communication site serves a population of 1 million or more and the expected rent for the communication use is more than \$10,000 above the schedule rent; or

(v) The communication facilities are ancillary to and authorized under a right-of-way grant for a linear facility. In such cases, rent for the associated communication facilities is to be determined in accordance with the linear fee schedule.

(e)(1) The rental for right-of-way grants and temporary use permits not covered by the right-of-way schedule in § 2803.1-2(d)(5) will be determined by the authorized officer and paid annually in advance. Rental for communication site rights-of-way not covered by the schedule, except those issued pursuant to Section 28 of the Mineral Leasing Act (30 U.S.C. 185), will be based on comparative market surveys, appraisals, or other reasonable methods. All such rental determinations shall be documented, supported, and approved

by the authorized officer. Where the authorized officer determines that a competitive interest exists for site type right-of-way grants such as for wind farms, communication sites, etc., rental may be determined through competitive bidding procedures set out in § 2803.1-3.

(2) To expedite the processing of any grant or permit covered by paragraph (e)(1) of this section, the authorized officer may estimate rental and collect a deposit in advance with the agreement that upon completion of a rental value determination, the advance deposit will be adjusted according to the final fair market rental value determination.

(f) Decisions on rental determinations are subject to appeal under subpart 2804 of this title.

(g) Upon the holder's written request, rentals may be prepaid for 5 years in advance.

(h) If the rental required by this section is not paid when due, and such default for nonpayment continues for 30 days after notice, action may be taken to terminate the right-of-way grant or temporary use permit. After default has occurred, no structures, buildings or other equipment may be removed from the subservient lands except upon written permission from the authorized officer.

[52 FR 25818, July 8, 1987; 52 FR 36576, Sept. 30, 1987, as amended at 60 FR 57070, Nov. 13, 1995]

§ 2803.1-3 Competitive bidding.

(a) The authorized officer may identify and offer public lands for competitive right-of-way use either on his/her own motion or as a result of nomination by the public. Competitive bidding shall be used only for site-type right-of-way grants such as wind farms and communication sites. The authorized officer shall give public notice of such decision through publication of a notice of realty action as provided in paragraph (c)(1) of this section. The decision to offer public lands for competitive right-of-way use shall conform to the requirements of the Bureau's land use planning process. The authorized officer shall not offer public lands for competitive right-of-way use where equities such as prior or related use of

said lands warrant issuance of a non-competitive right-of-way grant(s).

(b) A right-of-way grant issued pursuant to a competitive offer shall be awarded on the basis of the public benefit to be provided, the financial and technical capability of the bidder to undertake the project and the bid offer. Each bid shall be accompanied by the information required by the notice of realty action and a statement over the signature of the bidder or anyone authorized to sign for the bidder that he/she is in compliance with the requirements of the law and these regulations. A bid of less than the fair market rental value of the lands offered shall not be considered.

(c) The offering of public lands for right-of-way use under competitive bidding procedures shall be conducted in accordance with the following:

(1)(i) A notice of realty action indicating the availability of public lands for competitive right-of-way offering shall be published in the FEDERAL REGISTER and at least once a week for 3 consecutive weeks in a newspaper of general circulation in the area where the public lands are situated or in such other publication as the authorized officer may determine. The successful qualified bidder shall, prior to the issuance of the right-of-way grant, pay his/her proportionate share of the total cost of publication.

(ii) The notice of realty action shall include the use proposed for the public lands and the time, date and place of the offering, including a description of the lands being offered, terms and conditions of the grant(s), rates, bidding requirements, payment required, where bid forms may be obtained, the form in which the bids shall be submitted and any other information or requirements determined appropriate by the authorized officer.

(2) Bids may be made either by a principal or duly qualified agent.

(3) All sealed bids shall be opened at the time and date specified in the notice of realty action, but no bids shall be accepted or rejected at that time. The right to reject any and all bids is reserved. Only those bids received by the close of business on the day prior to the bid opening or at such other time stated in the notice of realty ac-

tion and made for at least the minimum acceptable bid shall be considered. Each bid shall be accompanied by U.S. currency or certified check, postal money order, bank draft or cashier's check payable in U.S. currency and made payable to the Department of the Interior—Bureau of Land Management for not less than one-fifth of the amount of the bid, and shall be enclosed in a sealed envelope which shall be marked as prescribed in the notice of realty action. If 2 or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by drawing unless another method is specified in the notice of realty action. The drawing shall be held by the authorized officer immediately following the opening of the sealed bids.

(4) In the event the authorized officer rejects the highest qualified bid or releases the bidder from such bid, the authorized officer shall determine whether the public lands involved in the offering shall be offered to the next highest bidder, withdrawn from the market or reoffered.

(5) If the highest qualified bid is accepted by the authorized officer, the grant form(s) shall be forwarded to the qualifying bidder for signing. The signed grant form(s) with the payment of the balance of the first year's rental and the publication costs shall be returned within 30 days of its receipt by the highest qualified bidder and shall qualify as acceptance of the right-of-way grant(s).

(6) If the successful qualified bidder fails to execute the grant form(s) and pay the balance of the rental payment and the costs of publication within the allowed time, or otherwise fails to comply with the regulations of this subpart, the one-fifth remittance accompanying the bid shall be forfeited.

[52 FR 25820, July 8, 1987]

§ 2803.1-4 Bonding.

The authorized officer may require the holder of a right-of-way grant or temporary use permit to furnish a bond or other security satisfactory to him, to secure the obligations imposed by