

## § 223.102

in contract performance shall be presumed not to be responsible, unless the Contracting Officer determines that the circumstances were beyond the purchaser's control and were not created through improper actions by the purchaser or affiliate, or that the purchaser has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably under a contract is strong evidence that a purchaser is not a responsible contractor. The Contracting Officer shall consider the number of contracts involved and extent of deficiency of each in making this evaluation;

(4) The purchaser has a satisfactory record of integrity and business ethics;

(5) The purchaser has or is able to obtain equipment and supplies suitable for logging the timber and for meeting the resource protection provisions of the contract;

(6) The purchaser is otherwise qualified and eligible to receive an award under applicable laws and regulations.

(c) If the prospective purchaser is a small business concern and the Contracting Officer determines that the purchaser does not qualify as a responsible purchaser on an otherwise acceptable bid, the Contracting Officer shall refer the matter to the Small Business Administration which will decide whether or not to issue a Certificate of Competency.

(d) Affiliated concerns, as defined in § 223.49(a)(5) of this subpart are normally considered separate entities in determining whether the concern that is to perform the contract meets the applicable standards for responsibility. However, the Contracting Officer shall consider an affiliate's past performance and integrity when they may adversely affect the prospective purchaser's responsibility.

[53 FR 33132, Aug. 30, 1988]

### § 223.102 Procedures when sale is not awarded to highest bidder.

If the highest bid is not accepted and the sale is still deemed desirable, all bids may be rejected and the timber re-advertised; or, if the highest bidder cannot meet the requirements under which the timber was advertised or the withholding of award to him is based

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on one or more of paragraphs (c), (d), and (e) of § 223.100, award at the highest price bid may be offered to the next highest qualified bidder or to the other qualified bidders in order of their bids until the award is accepted by one or refused by all of the qualified bidders.

(92 Stat. 1301, Pub. L. 95-465)

[44 FR 73029, Dec. 17, 1979. Redesignated at 49 FR 2761, Jan. 23, 1984, and 53 FR 33132, Aug. 30, 1988]

### § 223.103 Award of small business set-aside sales.

If timber is advertised as set aside for competitive bidding by small business concerns, award will be made to the highest bidder who qualifies as a small business concern and who has not been determined by the Small Business Administration to be ineligible for preferential award of set-aside sales. If there are no qualified small business bidders any readvertisement shall be without restriction on the size of bidders.

(92 Stat. 1301, Pub. L. 95-465)

[44 FR 73029, Dec. 17, 1979. Redesignated at 49 FR 2761, Jan. 23, 1984, and 53 FR 33132, Aug. 30, 1988]

## CONTRACT ADMINISTRATION

### § 223.110 Delegation to regional forester.

The Chief, Forest Service, after approval of conditions of sale, may authorize Regional Foresters formally to execute timber sale contracts and related papers in sales exceeding the volume which the Regional Forester has been authorized to sell.

### § 223.111 Administration of contracts in designated disaster areas.

This section is to implement the provisions of section 242 (a), (b), and (c) of the Disaster Relief Act of 1970 (84 Stat. 1956) which relate to contracts for the sale of National Forest timber in connection with areas damaged by major disaster as designated by the President pursuant to the Act.

(a) Where an existing contract for the sale of National Forest timber does not provide relief from major physical

change not due to purchaser's negligence prior to approval of construction of any section of specified road or other specified development facility and, as a result of a major disaster in a designated area a major physical change results in additional construction work by the purchaser in connection with such a road or facility, the United States shall bear such increased construction cost if, as determined by the Chief, Forest Service, the estimated cost is—

(1) More than \$1,000 for sales under 1 million board feet, or

(2) More than \$1 per thousand board feet for sales of 1 to 3 million board feet, or

(3) More than \$3,000 for sales over 3 million board feet.

(b) Where the Chief, Forest Service, determines that damages are so great that restoration, reconstruction, or construction is not practical under the cost-sharing arrangement in paragraph (a) of this section, he may allow cancellation of the contract notwithstanding provisions therein or in § 223.116.

(c) The Chief, Forest Service, is authorized to reduce to 7 days the minimum time to advertise the sale of National Forest timber whenever he determines that—

(1) The sale of such timber will assist in the construction of any area of a State damaged by a major disaster,

(2) The sale of such timber will assist in sustaining the economy of such area, or

(3) The sale of such timber is necessary to salvage the value of timber damaged in such major disaster or to protect undamaged timber.

(d) Any request for relief under paragraph (a) or (b) of this section shall be made in writing to the Forest Supervisor having administrative responsibility for the land involved.

(Sec. 242 (a), (b), and (c), 84 Stat. 1756, 42 U.S.C. 4461)

**§ 223.112 Modification of contracts.**

(a) Timber sale contracts may be modified only when the modification will apply to unexecuted portions of the contract and will not be injurious to the United States. Modifications may be made by the officer approving

the sale, by his successor, or by his superior, except as provided in § 223.110.

(b) Timber sale contracts awarded after October 1, 1995, that have been suspended for more than 90 days, during the normal operating season, at no fault of the purchaser, because of administrative appeals or litigation, that did not include contract provisions for rate redeterminations may be modified at the request of the timber sale purchaser to include a rate redetermination for the remaining unharvested volume to reflect significant decreases in market value during the period of delay. Rates in effect at the time of the suspension will be redetermined in accordance with the standard Forest Service methods in effect 45 days prior to the rate redetermination.

[42 FR 28252, June 2, 1977. Redesignated at 49 FR 2760-2761, Jan. 23, 1984, as amended at 69 FR 18814, Apr. 9, 2004]

**§ 223.113 Modification of contracts to prevent environmental damage or to conform to forest plans.**

Timber sale contract, permits, and other such instruments may be modified to prevent environmental damage or to make them consistent with amendments or revisions of land and resource management plans adopted subsequent to award or issuance of a timber sale contract, permit, or other such instrument. Compensation to the purchaser, if any, for modifications to a contract shall be made in accordance with provisions set forth in the timber sale contract. When determining compensation under a contract, timber payment rates shall be redetermined in accordance with appraisal methods in § 223.60 of this subpart.

[61 FR 64816, Dec. 9, 1996]

**§ 223.114 Acquisition by third party.**

No agreement permitting a third party to acquire the rights of a purchaser under a timber sale contract may be recognized and approved by the Forest Service except in writing, signed by the officer approving the sale, his successor, or superior officer. Such approval shall not relieve the purchaser of his responsibilities or liabilities under the timber sale contract and may be given only if—