

(d) *Bid deposits and award of contract.* Sealed bids must be accompanied by a deposit. For mineral materials offered at oral auction, bidders must make the deposit before opening of the bidding.

(1) Bid deposits must be equal to 10 percent of the appraised value but not less than \$100.00.

(2) Bid deposits must be in the form of cash, money order, bank drafts, cashier's or certified checks made payable to the Forest Service, or bonds acceptable to the Forest Service (§ 228.51(b)).

(3) Upon conclusion of the bidding, the authorized officer will return the deposits of all unsuccessful bidders. The successful bidder's deposit will be applied toward the purchase price. If the contract is not awarded to the high bidder due to an inability to perform the obligations of the contract, the deposit, less expenses and damages incurred by the United States, may be returned. The return of a deposit does not prejudice any other rights or remedies of the United States. The contract may be offered and awarded to the next successive qualified high bidder, or, at the discretion of the authorized officer, the sale may be either re-advertised or negotiated if it is determined that a competitive sale is impracticable.

(4) Within 30 days after receipt of the contract, the successful bidder must sign and return the contract, together with any required bond, unless the authorized officer has granted an extension for an additional 30 days. The bidder must apply for the extension in writing within the first 30-day period. If the successful bidder fails to return the contract within the first 30-day period or within an approved extension, the bid deposit, less the costs of re-advertising and damages, may be returned without prejudice to any other rights or remedies of the United States.

(5) All sales must be processed on Forest Service-approved contract forms. The authorized officer may add provisions to the contract to cover conditions peculiar to the sale area. Such additional provisions must be made available for inspection by prospective bidders during the advertising period.

§ 228.59 Negotiated or noncompetitive sales.

(a) *Volume limitations.* When it is determined by the authorized officer to be in the public interest and when it is impracticable to obtain competition, mineral materials not exceeding 100,000 cubic yards in volume (or weight equivalent) may be sold in any one sale at not less than the appraised value, without advertising or calling for bids, except as provided in paragraphs (b) and (c) of this section. The authorized officer may not approve noncompetitive sales that exceed the total of 200,000 cubic yards (or weight equivalent) made in any one State for the benefit of any applicant in any period of 12 consecutive months.

(b) *Government programs.* In connection with a public works improvement project on behalf of a Federal, State, or local governmental agency, the authorized officer may sell to an applicant, at not less than the appraised value, without advertising or calling for bids, a volume of mineral materials not to exceed 200,000 cubic yards (or weight equivalent) when the public exigency will not permit delays incident to advertising (30 U.S.C. 602).

(c) *Appropriation for highway purposes.* For interstate and/or Federal aid highways, the Secretary of Transportation may appropriate any volume in accordance with 23 U.S.C. 107 and 317.

(d) *Use in development of Federal mineral leases.* When it is determined to be impracticable to obtain competition and the mineral materials are to be used in connection with the development of mineral leases issued by the United States (§ 228.44), the authorized officer may sell to a leaseholder a volume of mineral material not to exceed 200,000 cubic yards (or weight equivalent) in one State in any period of 12 consecutive months. No charge will be made for materials which must be moved in the process of extracting the mineral under lease, as long as the materials remain stockpiled within the boundaries of the leased area.

(e) *Exceptions.* (1) The Chief of the Forest Service may authorize the non-competitive sale of mineral materials in excess of the volume limitations in paragraphs (a), (b), and (d) of this section when necessary to:

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(i) Respond to an emergency affecting public health, safety or property;

(ii) Prevent the curtailment of operations conducted under the United States mining laws of May 10, 1872, as amended (30 U.S.C. 22 *et seq.*) which generate large volumes of mineral materials as a by-product; or

(iii) Respond to a critical public need for the prompt development of a mineral lease issued by the United States or a mining claim located under the United States mining laws of May 10, 1872, as amended (30 U.S.C. 22 *et seq.*).

(2) Any noncompetitive sale of mineral materials in excess of the volume limitations in paragraphs (a), (b), and (d) shall be subject to such restrictions as the Chief of the Forest Service determines to be in the public interest.

(3) Nothing in this paragraph shall otherwise alter the requirements of paragraphs (a) through (d) of this section.

[49 FR 29784, July 24, 1984, as amended at 52 FR 10565, Apr. 2, 1987; 53 FR 43691, Oct. 28, 1988]

§ 228.60 Prospecting permits.

(a) *Right conferred.* On acquired National Forest lands, prospecting permits may be issued which grant the permittee the exclusive right to explore for and to demonstrate the existence of a suitable mineral material deposit when existing information is insufficient. After the demonstration of a suitable deposit and confirmation of this by the authorized officer, the permittee will have a preference right to apply for a negotiated sale.

(b) *Limitations.* Mineral material may be removed from lands under a prospecting permit only to the extent necessary for testing and analysis or for the demonstration of the existence of a suitable deposit.

(c) *Environmental analysis.* Prospecting permits will be issued only after submission by applicant and approval by the authorized officer of a detailed operating plan. The authorized officer may require a bond in accordance with § 228.51. The authorized officer must ensure compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

(d) *Acreage and permit limitations.* A prospecting permit may not cover more

than 640 acres. No individual or group may have an interest at any one time in more than three prospecting permits on Forest Service lands administered by one Forest Supervisor.

(e) *Duration and extension of permits.* Prospecting permits may be issued for a period not to exceed 24 months, but they may be extended once for up to an additional 24 months if necessary to complete prospecting. Any application for extension must be submitted no later than 30 days before the expiration of the permit. The application for extension must provide evidence of diligence and state the reasons why additional time is considered necessary to complete prospecting work.

(f) *Refusal to extend permits.* The authorized officer may reject applications for extension of prospecting permits for the following reasons:

(1) *Failure to perform.* Failure of the permittee to perform prospecting or exploration work without adequate justification may result in the denial of an extension; or

(2) *Failure to apply.* If an application for extension is not submitted within the specified period, the permit may expire without notice to the permittee.

(3) *Public interest.* If the authorized officer determines that an extension may not be in the public interest, the application may be rejected.

§ 228.61 Preference right negotiated sales.

(a) *Qualification for sale.* When applying for a preference right negotiated sale, the permittee must demonstrate to the satisfaction of the authorized officer that a suitable deposit of mineral material has been discovered within the area covered by the prospecting permit. Information concerning trade secrets and financial matters submitted by the permittee and identified as confidential will not be available for public examination except as otherwise agreed upon by the permittee.

(b) *Application for sale.* The application must be submitted to the District Ranger's office on or before the expiration date of the prospecting permit or its extension. The authorized officer may grant 30 additional days for submitting the application if requested in