

§ 223.87

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

36 CFR Ch. II (7-1-08 Edition)

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 Act of 1976, as amended, and other Federal Statutes.

(b) As a prerequisite to participation in an oral auction, bidders shall submit a written sealed bid at least equal to the minimum acceptable bid prices specified in the prospectus. No price subsequently bid at oral auction shall be accepted if it is less than the written sealed bid.

(c) The Chief, Forest Service, shall specify the use of sealed bids or a mix of bidding methods in areas where he has reasonable belief that collusive bidding may be occurring or where he determines that less than normal competitive bidding is occurring.

(d) Sealed bids shall be used for sales within Federal Sustained Yield Units, except where the policy statement for the Unit restricts purchasers of timber within the Unit from buying National Forest timber outside the Unit and the Chief determines that oral bidding will protect individual communities within the Unit.

(e) The Chief, Forest Service, may authorize departures from the requirements of paragraphs (c) and (d) of this section when he determines that departures are necessary to protect the public interest.

(f) The Chief, Forest Service, may authorize the testing and evaluation of