

**TIMBER SALE PROSPECTUS**

<b>Sale Name :</b>	Green Slate	<b>Type of Sale :</b>	Scaled
<b>National Forest :</b>	Idaho Panhandle	<b>Ranger District :</b>	Avery
<b>Bidding Method :</b>	Sealed Bid	<b>Bid Guarantee :</b>	\$2,000.00

**Location of Bid Opening :** Forest Supervisor's Office, Idaho Panhandle National Forests, 3815 Schreiber Way, Coeur d'Alene ID 83815

**Date :** 09/25/2012

**Time :** 09:30 AM

**1. INTRODUCTION.** This prospectus furnishes prospective bidders with information not contained in the published advertisement and is designed to enable bidders to decide whether or not to further investigate the sale. The prospectus is not a legally binding document, but is offered to provide general information about a sale. The contract does not include descriptions, estimates, and other data in this prospectus, unless otherwise stated. In the event that the prospectus contains an error or contradicts the sample contract, the contract governs. Bidders are urged to examine the timber sale and make their own estimates. Timber sale Contract 2400-6 will be used. Inspect the sale area and the sample contract before submitting a bid. Obtain the appraisal, other information on the timber, and conditions of sale and bidding at Forest Service offices listed above and in the named attached advertisement.

**2. BIDDING.** This is a Sealed Bid sale. Bidders must submit sealed bids on prepared forms they can obtain from Forest Service offices listed above and in the attached advertisement. The forms include instructions for bidding and submission of the required certifications. A bid guarantee must be included with the bid in the form of cash, a bid bond on form FS-6500-13 (4/82) or later, certification of annual bid bond allocation on form FS-6500-13a (4/82) or later, an irrevocable letter of credit, a certified check, bank draft, cashiers check, official bank check, or bank or postal money order payable to the Forest Service, USDA in the amount specified above and in the bid form. The bid guarantee shall be returned to each bidder whose bid is not accepted.

**Total Sale Value Bidding:**

Prospective purchasers must submit bids in terms of the minimum acceptable total sale value. The bid form states minimum acceptable bid rates and estimated quantities of timber, together with the minimum acceptable total sale value. The advertised minimum acceptable total sale value is only for the biddable species, as listed on the bid form in the upper section of block 14. It does not include any non-biddable, fixed rate species listed in the lower section of block 14 titled "Required Removal at Fixed Rate. Only the Fixed Rate Applies." The bidder should enter the offer on the bid form only in terms of the total sale value. The Forest Service shall establish bid rates by species in the contract by multiplying each species' minimum acceptable bid rate by the bid increase percentage. Such rates will be rounded to the nearest cent. The bid increase percentage is the bidder's total sale value bid rate divided by the minimum acceptable total sale value. The total amount for stumps is the volume of each biddable species multiplied by its bid rate, plus the volume of each fixed rate species multiplied by its fixed rate.

**3. LOCATION AND DESCRIPTION OF TIMBER.** Refer to the sample contract and sale area map attached to the sample contract for legal location of sale area, location of subdivisions, location of cutting units, the acreage of sale area, and the cutting unit acreage.

THE FOLLOWING GENERAL LOCATION, ROUTES OF ACCESS, ACREAGES, AND OTHER SPECIAL LOCATION DATA DO NOT SUPERSEDE THE SALE AREA MAP OR SAMPLE CONTRACT.

The sale area is 190 acres in size and is located in section 24, T46N, R4E, of the Boise Meridian, Shoshone County, State of Idaho. Harvest is planned on 68 acres. The sale area lies in the Slate Creek drainage.

To access the sale area from St. Maries, Idaho: Take Forest Highway 50 to Avery Ranger Station (approximately 41 miles from St.

Maries); then turn north on Forest Road 225 (Slate Creek) for 2.5 miles; to Forest Road 1934. Follow Forest Road 1934 for 9 miles to sale center.

**4. TIMBER QUANTITIES AND RATES.** The quality, size, cut per acre, and product suitability of the timber are estimates based on detailed cruise information on file and available for inspection at the Forest Service offices listed above and in the advertisement. VOLUME QUANTITIES LISTED HEREIN ARE MADE AVAILABLE WITH THE UNDERSTANDING THAT VALUES SHOWN ARE FOREST SERVICE ESTIMATES AND ARE NOT GUARANTEED. For these reasons, bidders are urged to examine the timber sale area and make their own estimates.

THE MINIMUM ACCEPTABLE BID RATE IS STATED IN THE ATTACHED BID FORM. THESE RATES ARE EFFECTIVE AT THE TIME OF ADVERTISEMENT.

**Estimated Quantities and Minimum Acceptable Rates  
per Unit of Measure**

Species	Product	Unit of Measure	Estimated Quantities	Average DBH	Minimum Acceptable Bid Rates	Base Rates	Required Deposits	
							Slash Disposal	Road Maintenance
Combined Softwood	Sawtimber	Ton	3,555.00	N/A	\$5.18	\$ .92	\$0.90	\$1.08
Combined Softwood	Non-Saw	Ton	158.00	N/A	\$5.18	\$ .92	\$0.90	\$1.08
	<b>TOTAL</b>	Ton	3,713.00				\$3,341.70	\$4,010.04

The minimum acceptable total sale value bid for advertised timber is \$19,233.34. It does not include any non-biddable, fixed rate species listed on the bid form in the lower section of block 14 titled "Required Removal at Fixed Rate. Only the Fixed Rate Applies." The total amount for stumps is the volume of each biddable species multiplied by its bid rate, plus the volume of each fixed rate species multiplied by its fixed rate.

The bid rate for species and unit of measure are assigned under procedures for average bid premium bidding, as noted in this prospectus. This rate has been established by appraisal, with a cost allowance for the roads specified by the contract, if any. Required deposits for slash disposal and road maintenance are in addition to the advertised rates for timber.

**5. PERIOD OF CONTRACT.** The normal operating season covers the period between 06/15 and 10/31. Contract termination date is 10/31/2015. Extensions of this contract may be granted only when the purchaser has met specified conditions.

If an appeal or lawsuit is filed challenging the decision to award this contract or upon determination by the Regional Forester that conditions existing on this timber sale are the same as, or nearly the same as, conditions existing on other timber sale(s) in appeal or litigation, Contracting Officer may delay award or reject all bids. If delay in award is for 30 days or more during Normal Operating Season after bid opening, Contracting Officer shall, upon award, adjust the contract term to include additional calendar days in one or more Normal Operating Seasons equal to the time award is delayed during Normal Operating Season.

The purchaser must submit a Plan of Operations to the Contracting Officer for approval before operations begin or within 60 days of sale award, whichever is earlier. The plan must show how the purchaser plans to complete the contract by the termination date. In addition to the Plan of Operations, the purchaser must submit an annual Operating Schedule before commencing operations. This schedule will include the anticipated major activities and needs for harvest. This annual Operating Schedule does not require concurrence of the Forest Service.

**6. PAYMENT.** Payment for timber and any required deposits for slash disposal or road maintenance are required in advance of cutting. The Purchaser may transfer purchaser credit into the contract, or provide an acceptable payment guarantee prior to cutting. Payment for required deposits must be a cash payment. The purchaser shall make advance deposits in accordance with provision B(T)4.212 - Advance Deposits.

The high bidder whose bid is accepted shall, at the time the contract is signed and returned by the bidder, make a downpayment

pursuant to Title 36, Section 223.49, of the Code of Federal Regulations. The Contracting Officer will notify the high bidder of the amount necessary to make this payment. In no case shall the downpayment be less than 10 percent of the total advertised value plus 20 percent of the bid premium. After receipt of the downpayment and a satisfactory performance bond and upon execution of the timber sale contract, the Forest Service will return the bid guarantee. A cash bid guarantee may be applied to the downpayment at the request of the purchaser. The purchaser cannot apply the amount deposited as a downpayment to cover other obligations due on the sale until conditions stated in the contract for release of downpayment have been met. Refer to the sample contract for the specific conditions.

By the midpoint between award date and the termination date, the purchaser shall have paid for, or in lieu thereof, deposited cash in the greater amount of: (1) 50 percent of the total estimated bid premium, or (2) 35 percent of the total estimated sale value at bid date, exclusive of required deposits, rounded up to the next \$100.

By the midpoint of the last normal operating season, or 12 months from the initial periodic payment, whichever date is first, the purchaser shall have paid for, or in lieu thereof, deposited cash in the amount of 75 percent of the total estimated sale value at bid date, exclusive of required deposits, rounded up to the next \$100.

**7. PERFORMANCE BOND.** A performance bond is required. The penal sum of the bond will be 10 percent of the total bid value of the sale, rounded up to the nearest \$100 when the total bid value is \$10,000 or less; and rounded up to the nearest \$1,000 when the total bid value exceeds \$10,000 or \$2,000.00 whichever is greater. If an irrevocable letter of credit is used to secure the performance bond, the termination of the letter of credit must be at least 6 months past the contract termination date.

**8. SPECIFIED ROADS.** Not Applicable.

**9. ROAD MAINTENANCE.** Purchaser shall perform or pay for road maintenance work, commensurate with purchaser's use, on roads controlled by Forest Service, and used by purchaser in connection with this sale. Road maintenance requirements are based on the predicted haul route. Any change in the purchaser's actual haul route may necessitate a change in the roads to be maintained and/or in the amount of required deposit for road maintenance. Required deposits for road maintenance are listed in Section 4 and in the sample contract. Maintenance specifications are in the sample contract.

**10. INAPPLICABLE STANDARD PROVISIONS.** See sample contract.

**11. SPECIAL PROVISIONS.** See sample contract.

**12. SET-ASIDE SALES.** Not Applicable.

**13. LOG EXPORT AND SUBSTITUTION RESTRICTIONS.** The contract requires domestic processing of included timber except for species declared to be surplus, and prohibits the use of such included timber in substitution for unprocessed private timber exported. The bidder, by signing the bid for advertised timber, certifies compliance with the applicable prohibitions against export and substitution prescribed in the Forest Resources Conservation and Shortage Relief Act of 1990, as amended (16 U.S.C. 620, et seq.) with each bid.

**14. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE REVIEW.** If the total bid value plus required deposits for this contract exceeds \$10 million, before award, the Forest Service shall request an equal employment opportunity compliance review of the high bidder to determine compliance with the provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967 and Executive Order No. 12086 of October 5, 1978.

**15. AWARD.** The Contracting Officer is required to make a determination of bidder responsibility as stated in Title 36, Section 223.101, of the Code of Federal Regulations.

To determine a purchaser to be responsible, a Contracting Officer must find that:

- a. The purchaser has adequate financial resources to perform the contract or the ability to obtain them;
- b. The purchaser is able to perform the contract within the contract term taking into consideration all existing contracts and Governmental business commitments;

- c. The purchaser has a satisfactory performance record on timber sale contracts. A prospective purchaser that is or recently has been seriously deficient 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;
- d. The purchaser has a satisfactory record of integrity and business ethics;
- e. 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;
- f. The purchaser is otherwise qualified and eligible to receive an award under applicable laws and regulations.

Bidders, by signing the bid form, certify that, to the best of bidder's knowledge the bidder will meet the requirements in 36 CFR 223.101, determination of purchaser responsibility, and, if awarded this contract, that bidder will complete the timber sale contract and any modifications thereof in accordance with its terms including requirements to purchase, cut, and remove included timber.

**16. FALSE STATEMENTS ACT.** Bidders, by signing the bid form, certify that they are aware that bidder is subject to the penalties prescribed in 18 U.S.C. 1001, Chapter 47, Fraud and False Statements (P.L. 104-45). The Act states "whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than 5 years, or both."

**17. DAMAGES.** This contract shall be terminated for breach pursuant to paragraph 16, 19, and/or 21 of the bid form and the terms of the sample contract if: 1) bidder fails to execute a timber sale contract, furnish a downpayment, or furnish a satisfactory performance bond within 30 days of the award letter's date; or 2) bidder is found to have violated the False Statements Act in making any statement or certification on the bid form including not meeting purchaser responsibility requirements, and bidder has made a false statement. The bid guarantee shall be retained, in whole or in part, by the Forest Service to satisfy any damages that may be assessed.

**18. SUSPENSION AND DEBARMENT CERTIFICATION.** Non-procurement debarments and suspensions are governed by the Government-wide common rules (7 CFR 3017).

These rules require each timber sale purchaser, to submit a certification for itself, its principals, and its affiliates when bidding on sales. The bidder must designate its status regarding debarment, suspension, and other matters as specified on the bid form. The bidder, by signing the bid form, certifies this status. An explanation for not submitting a certification may be submitted. The Contracting Officer will determine whether the explanation provides sufficient reason for permitting participation in the bidding. Also, as a timber sale purchaser enters into transactions with subcontractors, these subcontractors must certify their eligibility. The certification titled "Subcontractor Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion" must be provided to subcontractors, but completed certifications are not required to be submitted with bid forms. Purchaser must keep these subcontractor certification forms on file for review by the Forest Service, if requested.

The certification forms and instructions for subcontractor transactions are provided as an addendum to the bid form.

**19. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) LOGGING REGULATIONS.** Conduct of operations on this timber sale is subject to inspection for compliance with the logging operations regulations at 29 CFR 1910.266 by OSHA. This standard is applicable to the entire logging industry wherever logging operations occur. Information is available to assist purchasers to ensure compliance with the logging operations regulations during conduct of this timber sale from the U.S. Department of Labor, Occupational Safety and Health Administration, OSHA Boise Area Office, 1150 North Curtis Road, Suite 201 Boise, ID 83706, (208) 321-2960.

## **20. GENERAL.**

Prior to commencement, a pre-work conference will be held to discuss contract and work performance requirements. (C6.10)

All off-road equipment will be washed prior to entry into sale area. (C6.351#)

Any snags that are not a safety hazard will be retained in each unit. (C2.303#)

Purchaser shall keep roads needed for fire protection or other purposes, and designated on Sale Area Map, reasonably free of equipment and products, slash and debris resulting from Purchaser's operations. (B6.22)

Warning signs at the logging sites will inform public of logging activities. (B6.33)

The road surface and drainage will be restored to the pre-harvest condition after skidding and landing activities.

No excavated skid trails will be allowed.

Skid trails will be seeded, fertilized, and water barred upon completion of the sale. Seed mixes will be approved by the Forest Service and will be certified noxious weed-free. (C6.6, C6.601#)

Purchaser will follow BPA power line safety guidelines. (C6.338)

Purchaser will limb and top at landings and pile. (C6.7)

A temporary road will be required to access units 1A and 1B.

Jersey barriers to be used on temporary road (BPA tower protection) are located at the lower landing in Avery, and will need to be replaced after operations.

This project may be affected by litigation that could result in operations being suspended or the contract being cancelled. As a condition of award, the contractor will be required to sign a limited liability agreement that would limit the liability of the Government if operations are suspended or the contract is cancelled. A copy of the agreement is attached.

Prospective purchasers will need to obtain a key to the gate, from either the St. Maries or Avery Ranger District, prior to accessing the sale area.

Public burden for this collection is estimated to be 0.5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Under the Paperwork Reduction Act of 1995, an agency shall not conduct or sponsor, and no persons are required to respond to, a collection of information unless it displays a valid OMB control number.

PRE-AWARD WAIVER, RELEASE, AND LIMITATION OF LIABILITY AGREEMENT (TIMBER SALES)

This PRE-AWARD WAIVER, RELEASE, AND LIMITATION OF LIABILITY AGREEMENT ("Agreement") is entered into as of this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ between the U.S. Forest Service ("Forest Service") and \_\_\_\_\_ ("Purchaser") (together sometimes referred to herein as the "Parties").

RECITALS

WHEREAS, on or about \_\_\_\_\_, the Forest Service declared Purchaser to be the apparent high-bidder on the contract to operate the Green Slate Timber Sale, located on Idaho Panhandle National Forest;

WHEREAS, the Parties recognize that the Green Slate Timber Sale may be affected by existing and/or threatened litigation ("Litigation") and that, due to such Litigation, the Contracting Officer may instruct Purchaser to delay or suspend operations, and/or modify or terminate the contract for the Green Slate Timber Sale; and

WHEREAS, Purchaser desires the Forest Service to proceed with the award of the contract, despite the possibility that the Forest Service might delay or suspend operations, and/or modify or terminate the contract;

NOW THEREFORE, the Parties agree as follows:

TERMS AND CONDITIONS

1. Contract Award. After the Parties' execution of this Agreement, the Contracting Officer shall promptly award the contract for the Green Slate Timber Sale to Purchaser, if Purchaser has met all the eligibility requirements for contract award.
2. Release of Claims. Except as provided in Paragraph Three, Purchaser agrees to waive and release any and all claims against the Forest Service, Department of Agriculture, and/or United States (collectively the "Government") based in whole or in part upon any instruction issued by the Contracting Officer to delay or suspend operations, and/or modify or terminate the contract for the Green Slate Timber Sale because of Litigation. Purchaser agrees that the foregoing waiver and release includes, but is not limited to, any claim based in whole or in part upon (a) any finding that the Forest Service failed to comply with environmental laws, regulations, rules, and/or policy; (b) any express or implied contractual warranty regarding the availability of timber for harvest; or (c) any express or implied contractual duty to cooperate and not to hinder Purchaser's performance.
3. Purchaser's Remedies. In the event that the Contracting Officer instructs Purchaser to delay or suspend operations, and/or modify or terminate the contract because of Litigation, Purchaser shall be entitled to the remedies set forth in the Green Slate Timber Sale contract, except as provided in Paragraph Four.
4. Limitation of Liability. In the event that the Contracting Officer instructs Purchaser to delay or suspend operations, and/or modify or terminate the contract because of Litigation, Purchaser shall not be entitled to any kind of breach damages, reliance damages, restitution damages, consequential damages, or special damages, except as specifically allowed in the contract. Moreover, Purchaser shall not be entitled to the following contract remedies set forth in provisions B/BT8.341 and B/BT8.342: 1) replacement volume, and 2) liquidated damages. Nor shall Purchaser have the right to unilaterally terminate the contract under provision B8.342, unless the duration of the delay or suspension exceeds either six months of Normal Operating Season time or one calendar year.
5. Merger. Upon the Parties' execution of the contract for the Green Slate Timber Sale, this Agreement shall become part of such contract as an addendum thereto. Should there be a conflict between the terms of this

Agreement and the terms of the original contract, the terms of this Agreement shall govern. The Parties' subsequent execution of the contract for the Green Slate Timber Sale shall not in any way affect the waiver, release, and limitation of liability, contained herein. Should Purchaser assign or otherwise transfer contract-performance duties to a third-party, this Agreement shall be binding on the subsequent contract holder and/or operator.

6. Purchaser's Affirmation. By executing this Agreement, Purchaser affirms that it has freely and knowingly agreed to the foregoing waiver, release, and limitation of liability. Moreover, Purchaser affirms that the timber sale contract award by the Forest Service, which might have been delayed or withheld, constitutes adequate consideration for the foregoing waiver, release, and limitation of liability.
7. Choice of law. This agreement shall be governed by the laws of the United States and federal common law without regard to conflicts of laws.
8. Severability. In the event that a tribunal of competent jurisdiction invalidates any part of this Agreement, the Parties agree that such part shall be severed and that the remaining parts shall continue in full force and effect.
9. Jurisdiction. The Parties expressly agree that the United States Court of Federal Claims and the U.S. Civilian Board of Contract Appeals shall have jurisdiction over this Agreement and hereby consent to the jurisdiction of such bodies. The foregoing agreement and consent shall not be construed to interfere with or defeat the proper jurisdiction of other courts.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement.

USDA, Forest Service:

\_\_\_\_\_[Purchaser]\_\_\_\_

By:  
Title: Contracting Officer

By:  
Title:

I, \_\_\_\_\_, certify that I have full authority to represent the interests of \_\_\_\_\_[Purchaser]\_\_\_\_, and that my signature above binds \_\_\_\_\_[Purchaser]\_\_\_\_ to this agreement.

\_\_\_\_\_  
Corporate Seal  
(If one exists)