

**Forest Service Handbook
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Washington, DC**

Forest Service Handbook 2409.18 – Timber Sale Preparation Handbook

Chapter 60 - Bid Opening – Gate 5

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Digest: Following is an explanation of the changes throughout the directive by section.

60: Makes minor technical and editorial changes to clarify wording throughout the chapter.

62.12: Establishes code and caption “Bids for Negotiated Sales,” and sets forth direction for requiring a completed bid form and bid guarantee.

62.28: 62.28e: Removes codes, captions, and direction and recodes captions and direction to sections 62.4 through 62.45.

62.31: Adds direction on procedures to follow when sale is subject of litigation.

62.4: Removes caption and direction and recodes to section 62.5. Recodes to this section direction previously set out in section 62.28.

62.41: 62.46: Establishes codes, and recodes to these sections captions and direction previously set out in sections 62,28a through 62.28e.

62.46: Establishes code, caption “Tentative Award when Litigation is Filed,” and sets forth direction on procedures to follow when litigation is filed prior to award.

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62.5: Establishes code and recodes to this section caption and direction previously set out in section 62.4.

65: Removes references to obsolete form SF-119. Adds direction to follow procedures in 48 CFR 3.405.

66: Updates GAO references.

66.1: Adds direction for filing a bid protest.

66.4: Removes obsolete reference to breach and clarifies procedures when there is an urgent need to award.

67.2: Removes exhibit 02. Revises contact information for DOJ.

67.6: Removes obsolete reference to 7 CFR 3017 and adds reference to FSM 2433.

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61 - Activities at Gate 5

Gate 5 activities include accepting bids, conducting a sale auction, when appropriate, and determining the successful bidder (FSM 2430).

61.05 - Definitions

The following definitions apply to this chapter:

Bid Custodian. A person delegated responsibility for receipt and custody of sealed bids.

Posting bids. A process whereby the contents of an opened sealed bid for a timber sale are made public.

Sale Officer. A person delegated the responsibility for any specific aspect or task in the bidding or awarding process for timber sales.

61.1 - Confidential Bid Information

The line officer responsible for a timber sale shall designate a bid custodian in each office to be responsible for receipt and custody of sealed bids, and a sale officer to open, review, and post bids. All bids received before the time set for the opening of bids must be kept secure (48 CFR 14.401). Before the time set for the opening of bids, the bid custodian shall not divulge to anyone any information concerning the number of bids received or whether any bids have been received. However, upon request of a bidder, the bid custodian may acknowledge receipt of that bidder's sealed envelope. Similarly, before the time for opening bids, it is prohibited for any Forest Service employee with knowledge of any bid submitted by hand or with knowledge of the making, amendment, or withdrawal of a bid by mail or by telegram to make any statement to anyone concerning that bid, except that the employee may acknowledge receipt to the submitter, if requested. Maintain the same confidentiality for oral statements of intent to bid, whether or not the statements include prices.

Envelopes marked as bids, but not identifying the bidder or the name of the sale, may be opened solely for the purpose of identification and only by the bid custodian. If a sealed bid is opened by mistake, the envelope must be signed by the opener, whose position must be written thereon, and delivered to the bid custodian. The bid custodian shall immediately write on the envelope: (1) an explanation of the opening, (2) the date and time opened, and (3) the sale name and date of bid opening, and shall sign the envelope (48 CFR 14.401).

62 - Receiving, Opening, Reviewing, and Posting Bids

The rules at Title 48 of the Code of Federal Regulations are the Federal Acquisition Regulations (FAR) for procurement contracts (48 CFR Subparts 14.2 through 14.4). However, the FAR offers excellent guidance for receiving, opening, reviewing, and posting bids for timber sale contracts.

62.1 - Receiving Bids

Bidders usually submit sealed bids by mail or deliver them by hand. Telegraphic, email, and facsimile bids are not acceptable. Accept all bids that are received within the advertised time limits.

If a bidder alleges a mistake in a sealed bid or wishes to change a bid for any reason prior to the time set for bid opening, the bidder may recall the bid and correct or withdraw the bid or substitute another bid. The bidder may modify the bid not later than the exact time set for opening of bids (48 CFR 14.303). A bid may be withdrawn in person by a bidder or their authorized representative if, before the exact time set for opening of bids, the identity of the person requesting withdrawal is established, and that person signs a receipt for the bid (48 CFR 14.303). However, the bid custodian or other employees that may know of bids shall not disclose receipt of any other bids.

The bid custodian shall deliver the bids received to the sale officer at the time of the bid opening. The sale officer shall disclose the bids received to the persons present at the bid opening only at the appointed time for bid opening.

62.11 - Late Bids

Consider a bid late if it is received at the designated office after the exact time stated for opening in the advertisement. The rules at 48 CFR 14.304-1 govern consideration or return of late bids. The regulations allow consideration of a late bid only if receipt occurs before sale award and one of the following conditions is met:

1. The contracting officer determines that the late bid was due to mishandling by the Forest Service after delivery by the post office (for example, failure to pick up or process the mail).
2. The bidder sent the late bid by registered or certified mail not later than the 5th calendar day before the date specified for the receipt of bids. For example, a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been sent by registered or certified mail by the 15th or earlier. The only acceptable evidence to establish the date of mailing of a late bid sent by the U.S. Postal Service is a U.S. postmark on the bid envelope. The postmark must show a legible date, or the bid must be deemed to have been mailed late (48 CFR 14.304-1).
3. The bidder sent the late bid by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee not later than 5 p.m. at the place of mailing 2 working days prior to the date specified for receipt of bids. The term working days excludes weekends and Federal holidays. The only acceptable evidence to establish the date of mailing of a late bid sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee (48 CFR 14.304-1) is:

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- a. The date entered by the post office receiving clerk on the U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee label,
- b. The postmark on the envelope, or
- c. The postmark on the original receipt from the U.S. Postal Service.

The only acceptable evidence to establish the time of receipt at the Forest Service office where the bids are opened is the time and date stamp on the bid envelope (48 CFR 14.304-1).

If the Forest Service cannot consider a late bid for award, the sale officer or contracting officer shall promptly notify the bidder that the Forest Service received the bid late, cannot consider it, and the reason the bid cannot be considered (48 CFR 14.304-2).

Late bids that are not considered for award must be held unopened, unless opened for identification or to obtain the bid guarantee, until after award and then retained with other unsuccessful bids. However, any bid bond or guarantee must be returned (48 CFR 14.304-3).

The following is an example of a letter that may be used to notify the bidder:

We received your bid in response to the timber sale advertisement for (sale name, number) after the time for opening specified in the advertisement published in the _____ newspaper on _____. Accordingly, we cannot open your bid or consider it for sale award unless we receive from you, the original post office receipt for registered or certified mail showing a date of mailing not later than the 5th calendar day before the date specified for bid opening. For example, for a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month, you must show receipt of mailing by the 15th or earlier.

The contracting officer shall maintain records in the contract folder of any late bids according to requirements in 48 CFR 14.304-4 and shall include the following, if available:

1. A statement of the date and hour of mailing, filing, or delivery.
2. A statement of the date of receipt.
3. The determination, with supporting facts, as to whether or not the late bid was considered for award.
4. A statement of the disposition of the late bid.
5. The envelope, if the late bid was considered for award.

62.12 - Bids for Negotiated Sales

Require a completed bid form and bid guarantee when selling a previously advertised no bid sale under the original terms and conditions.

62.2 - Sealed Bids

Require sealed bids for all formally advertised sales, including initial bids for oral auction sales (sec. 57.1 of this handbook).

62.21 - Opening Bids

The sale officer shall determine when the time set for bid opening has arrived and shall inform those present. Sealed bids received at the place and by the date and hour of the bid opening designated in the advertisement must be personally and publicly opened by the designated sale officer (48 CFR 14.402-1). Open the bids in the presence of at least one witness. The sale officer and the witness(es) shall sign and note the time and date on the Bid for Advertised Timber, form FS-2400-14, in blocks 2, 3, and 4. For bid form FS-2400-42a, document the time and date and sign each bid in the margin. Documentation is also necessary, for short-notice sales. Interested parties may view the bid opening. The sale officer shall, before announcing or recording any bids:

1. Determine bid responsiveness (sec. 63.2);
2. Review the bids (sec. 62.22) to determine if there is an apparent mistake or minor informality in the bid.

62.22 - Reviewing Bids

The sale officer designated to open bids shall review each sealed bid for completeness and reasonableness before publicly posting any bid (sec. 62.27).

The rules at 48 CFR 14.405 and 14.407-1 to 14.407-3 govern consideration of mistakes in bids. Permit bidder to make corrections, as applicable, before posting any bid (sec. 62.23). Mistakes in bids are described in items 1 through 3.

1. Minor Informalities or Irregularities. The Federal Acquisition Regulations call a bid error that is merely a matter of form and not of substance a minor informality or irregularity. It also pertains to some immaterial defect in a bid, or variation of a bid from the exact requirements of the bid, which may be corrected or waived without being prejudicial to other bidders. The rules at 48 CFR 14.405 govern minor informalities or irregularities in bids. Refer to section 62.23 for guidance on processing a minor informality. The following are minor informalities:
 - a. Missing or Inappropriate Bid Guarantee (Block 15, form FS-2400-14). A bid without a bid guarantee or an inappropriate bid guarantee may be responsive provided conditions specified in section 63.2 are met.
 - b. Missing Bidder Information Requirements (Block 16b, form FS-2400-14). Permit the bidder to make corrections in documentation concerning the bidder's compliance with the provisions of section 202 of Executive Order 11246 (Non-discrimination in

Employment) of 9/24/65, as amended; and the Small Business Administration size requirements.

c. Missing Bidder Certifications (Block 28, form FS-2400-14). Accept bids with a missing certification of affiliation.

d. Unsigned Bid. Accept an unsigned bid as valid provided that the bidder included with it a properly signed document, such as a letter of transmittal, letter of credit, cashier's check, certified check, official bank check, or bid bond that clearly indicates an intention to bid (48 CFR 14.405). A bidder's failure to sign the actual bid form on an otherwise valid bid does not free the bidder from damages if the bidder elects not to sign a contract.

e. Missing Tax Identification Number. Accept bids with a missing tax identification number.

f. Missing Bidder's Business Address. Accept bids with a missing bidder's business address.

g. Missing Debarment Certification. Accept bids with a missing certification regarding debarment, suspension, and other responsibility matters on primary covered transactions when the bid form FS-2400-42a is used.

2. Other Mistakes. The rules at 48 CFR 14.407-1 to 14.407-3 govern consideration of mistakes in bids. Other mistakes in bids may be as follows:

a. Clerical Errors. Generally, a clerical error is a mistake in writing or copying. Examples of apparent clerical mistakes are obvious misplacement of a decimal point; obvious reversal of the price (that is, sawtimber and small roundwood); or obvious incorrect discounts. A clerical error on a timber sale bid is usually on the bid rate. A clerical error may exist on the bid rate when the effect of a mistake on the bid is negligible when contrasted with the total bid rate for that species and product or contrasted with the total sale value. Refer to section 62.24 for direction on processing clerical errors.

b. Material Mistake. A material mistake is a substantive mistake in the bid that is considered to be so serious that a contract cannot be awarded without correcting the mistake or the mistake could be prejudicial to other bidders. An example of a material mistake would be that the bidder may have bid \$500 per hundred cubic feet (CCF) for pine pulpwood and it appears that the correct bid should have been \$5 per CCF. Refer to section 62.25 for direction on processing material mistakes.

3. Mistake Found After Contract Award. A purchaser or the contracting officer may discover a mistake in the bid after sale award. Refer to section 62.26 for direction on processing a mistake found after contract award.

62.23 - Processing Bids with Minor Informalities

Do not permit a bidder to modify, change, or explain the meaning of a bid after the exact time set for opening of the bids (48 CFR 14.303). However, bids that have correctable errors or omissions may be accepted as responsive, if the sale officer can determine from the content of the bid what the bidder's intentions were, and if the bidder otherwise met the requirements of the advertisement.

Accept a bid guarantee not enclosed with a bid when the guarantee is submitted before the advertised bid opening time for sealed-bid-only sales or prior to commencement of oral auctions for oral auction sales. The sale officer shall allow the bidder a reasonable amount of time to provide the bid guarantee prior to the oral auction. The sale officer shall determine the reasonable time to allow a bidder to provide the bid guarantee, as long as the addition of time does not unduly hinder the oral auction bidding process.

Permit the bidder to make corrections in documentation for the following after bid opening, but prior to award of the contract:

1. Bidder information requirements.
2. Certification of affiliation.
3. Manual signature on the bid form.
4. Tax identification number.
5. Business address.
6. Debarment certification.

If the bidder is present at the bid opening, the correction must be made prior to the sale officer posting the bids (sec. 62.27). Correction of the bid must be effected by attaching the verification to the original bid and a copy of the verification to the duplicate bid. Corrections must not be made on the face of the original bid.

Whether or not the bidder indicates that there is a minor informality or irregularity, accept the bid and continue the bid opening (sec. 62.21). If the bidder is not at the bid opening or does not provide the information prior to posting the bids, request this documentation in the apparent high bidder letter. If the bidder fails to cure the deficiency, the contracting officer may decide to not award the contract or may waive any minor informality and award the contract, whichever action is in the Government's best interest.

62.24 - Processing Bids with Clerical Errors

Do not permit a bidder to modify, change, or explain the meaning of a bid after the exact time set for opening of the bids (48 CFR 14.303). However, bids that have clerical errors may be

accepted if the sale officer can determine from the content of the bid, what the bidder's intentions were, and if the bidder otherwise met the requirements of the advertisement.

In the judgment of the sale officer, a bid appears unreasonable, the sale officer shall make a judgment on the possibility of a clerical mistake. If the bidder is present, privately ask the bidder if there is a clerical mistake (48 CFR 14.407-2). The sale officer first shall obtain from the bidder a verification of the intended bid and either give the bidder an opportunity to cure any deficiency resulting from a clerical error or waive the deficiency, whichever is to the advantage of the Government. The bidder may correct clerical mistakes if the correction is made prior to the sale officer posting the bids (sec. 62.27). Correction of the bid must be effected by attaching the verification to the original bid and a copy of the verification to the duplicate bid. Corrections must not be made on the face of the original bid. Whether or not the bidder indicates that there is a clerical mistake, accept the bid and continue the bid opening.

In case of clerical errors in bids, take the following actions when the bidder is not present at the bid opening.

1. If there is only one bid and the sale officer determines that the bid has a clerical error, identify it as the apparent high bidder if the bid amount can be determined, and if it is greater than the advertised rate. The contracting officer may decide to:
 - a. Not award the contract or waive any clerical error and award the contract, whichever action is in the Government's best interest, or
 - b. Follow the procedures for addressing a material mistake in bid.
2. When there are two or more bids and the highest bid has a clerical error, identify the highest valid bidder as the apparent high bidder at the valid bid rate. The contracting officer shall follow the procedures for addressing a material mistake in a bid (sec. 62.25).

For all cases outside the guidelines stated above, or where there is doubt, the sale officer shall submit the case to the contracting officer for processing, using the procedures for a material mistake in bids at section 62.25.

If there is doubt about the validity of a possible high bid, do not declare an apparent high bidder.

62.25 - Processing Bids with Material Mistakes

After the opening and posting of the bids and prior to award, the contracting officer shall examine all bids for mistakes overlooked at the bid opening (48 CFR 14.407-3). An example of a material mistake would be that the bidder bid \$500 per CCF for a small amount of pine pulpwood and it appears that the correct bid should have been \$5. In cases of apparent mistakes, and in cases where the contracting officer has reason to believe that a mistake may have been made, the contracting officer shall request from the bidder a verification of the bid, calling attention to the suspected mistake. The contracting officer may decide to:

1. Not award the contract, or waive any material mistake and award the contract, whichever action is in the Government's best interest, or
2. Follow the procedures in section 62.25a for a material mistake in a bid.

A material mistake must be corrected prior to award of the contract or the regional forester, in consultation with the Office of the General Counsel, may decide to not award the contract, or waive any material mistake and award the contract, whichever action is in the Government's best interest.

The authority to permit corrections of bids is limited to bids that, as submitted, are responsive to the sale offering. This authority may not be used to permit corrections of bids to make them responsive (sec. 63.2). For example, if the bidder failed to bid on one species, the bid is non-responsive and the error cannot be corrected (see sec. 63.2 for more guidance on non-responsive bids). Suspected or alleged material mistakes in bids must be processed as set out in section 62.25a.

62.25a - Procedures and Documentation

1. The contracting officer shall immediately request the bidder to verify the bid. Action taken to verify bids must be sufficient to reasonably assure the contracting officer that the bid, as confirmed, is without error; or to elicit the allegation of a mistake by the bidder. To assure that the bidder will be put on notice of a mistake suspected by the contracting officer, the bidder should be advised as appropriate:
 - a. Their bid is much higher than the other bids or the Government's estimate as to indicate a possibility of error;
 - b. Any other information, proper for disclosure, that leads the contracting officer to believe that there is a mistake in the bid.
2. If the bid is verified, the contracting officer shall consider the bid as originally submitted. If the bidder's firm offer of 90 days is likely to expire before a decision can be made, the contracting officer shall:
 - a. Request all bidders whose bids may become eligible for award to extend the time for acceptance of their bids, and
 - b. Retain bid guarantees for these bidders.

If the bidder, whose bid is believed erroneous, does not (or cannot) grant an extension of the 90-day time period, the bid must be considered as originally submitted. If the bidder alleges a mistake, the contracting officer shall advise the bidder to make a written request to withdraw or modify the bid. This request must be supported by written statements (sworn statements, if possible) providing the reasons why a bidder wishes to withdraw or modify the bid and must include all pertinent evidence, such as the bidder's file copy of the bid; the original worksheets and other data used in preparing the bid; subcontractors' quotations, if any; published price lists;

and any other evidence that establishes the existence of the error, the manner in which it occurred, and the bid actually intended.

3. When the bidder furnishes evidence supporting an alleged material mistake, the contracting officer shall refer the case to the regional forester together with the following data:

- a. A signed copy of the bid involved.
- b. A copy of the advertisement, bid form, prospectus, and any specifications or drawings relevant to the alleged mistake.
- c. An abstract or record of the bids received.
- d. A written request by the bidder to withdraw or modify the bid, together with the bidder's written statement and supporting evidence.
- e. A written statement by the contracting officer setting forth:
 - (1) The expiration date of the bid in question and of the other bids submitted;
 - (2) Specific information as to how and when the mistake was alleged;
 - (3) A summary of the evidence submitted by the bidder;
 - (4) Bid rate for timber of similar species and products sold on the same national forest within the previous 6-month period or, in the absence of a recent comparable contract, the advertised rate for the timber;
 - (5) Any additional pertinent evidence; and
 - (6) A recommendation that either the bid be considered for award in the form submitted or the bidder be authorized to withdraw or modify the bid.

4. Where the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake, the contracting officer shall consider the bid as submitted. The contracting officer shall fully document attempts made to obtain the information required and the action taken with respect to the bid.

62.25b - Decision

The regional forester may make the following decisions concerning material mistakes in bids:

1. If the bid is the apparent high bid, the bidder requests permission to correct the mistake, and the contracting officer determines that clear and convincing evidence establishes both the existence of the mistake and the bid actually intended, then the regional forester may make a determination permitting the bidder to correct the mistake,

provided, that this correction would not result in the second high bidder becoming the apparent high bidder. If such a determination occurs, the regional forester, in consultation with the regional attorney, shall either accept the bid as submitted or reject the bid.

2. If a bidder requests permission to withdraw a bid rather than correct it, the evidence is clear and convincing both as to the existence of a mistake and as to the bid actually intended, and the bid, both as uncorrected and as corrected, is the highest received, the regional forester, in consultation with the regional attorney, may make a determination to correct the bid and not permit its withdrawal. If the evidence of a mistake is clear and convincing only as to the mistake, but not as to the intended bid, or if the evidence reasonably supports the existence of a mistake but is not clear and convincing, the regional forester, in consultation with the regional attorney, may make a determination permitting the bidder to withdraw the bid.

3. If the evidence does not warrant a determination to correct, withdraw, or reject a bid, the regional forester, in consultation with the regional attorney, may make a determination that the bid be accepted.

4. The regional forester may request the Chief to submit doubtful cases to the Comptroller General (CG), through the Office of the General Counsel, for an advance decision by the CG concerning the merits of accepting the bid or allowing the bidder to correct or withdraw the bid.

62.25c - Recordkeeping

The contracting officer shall maintain records in the sale contract folder of all determinations made, the facts involved, and the action taken in each case.

62.26 - Correcting a Mistake Found After Award

The rule at 48 CFR 14.407-4 governs correction of mistakes found after award of a contract. If a bidder's discovery and request for correction of a mistake in bid is not made until after the award, it must be processed as follows:

62.26a - Procedures and Documentation

The contracting officer shall refer the case to the regional forester along with the following data:

1. The contracting officer shall request the bidder to support the alleged mistake by submission of written statements and pertinent evidence, such as:
 - a. The bidder's file copy of the bid.
 - b. The bidder's original worksheets and other data used in preparing the bid.
 - c. Subcontractors' and suppliers' quotations, if any.

- d. Any other evidence that will serve to establish the mistake, the manner in which the mistake occurred, and the bid actually intended.
2. The case file concerning an alleged mistake must contain the following:
 - a. All evidence furnished by the bidder in support of the alleged mistake.
 - b. A written statement by the contracting officer:
 - (1) Describing the timber sale involved.
 - (2) Specifying how and when the mistake was alleged or disclosed.
 - (3) Summarizing the evidence submitted by the bidder and any additional evidence considered pertinent.
 - (4) Including the bid rate for timber of similar species and products sold on the same national forest within the previous 6-month period or, in the absence of a recent comparable contract, the advertised rate for the timber.
 - (5) Setting forth the contracting officer's opinion about whether or not a bona fide mistake was made and whether or not the contracting officer was, or should have been, on notice of the mistake before the award, together with the reasons for, or data in support of, such opinion.
 - (6) Setting forth the course of action with respect to the alleged mistake that the contracting officer considers proper on the basis of the evidence and, if other than a change in contract price is recommended, the manner by which the contracting officer proposes to proceed.
 - (7) Disclosing the status of performance and payments under the contract, including contemplated performance and payments.
3. A signed copy of the bid involved.
4. A copy of the advertisement, bid form, prospectus, and any specifications or drawings relevant to the alleged mistake.
5. An abstract or record of the bids received.
6. A written request by the bidder to reform or rescind the contract and copies of all other relevant correspondence between the contracting officer and the bidder concerning the alleged mistake.
7. A copy of the contract and any modifications.

62.26b - Decision

The following decisions may be made by the regional forester, in consultation with the regional attorney, concerning mistakes in bids found after award:

1. To correct the mistake by mutual contract modification, if correcting the mistake would be favorable to the Government without changing the essential requirements of the contract.
2. To rescind the contract.
3. To reform the contract to delete the items involved in the mistake or to lower the bid rate, if the change does not result in the second high bidder becoming the apparent high bidder.
4. To make no change in the contract as awarded, if the evidence does not support a change.

Determinations under paragraphs 2 and 3 may be made only on the basis of clear and convincing evidence that a mistake in bid was made. In addition, it must be clear that the mistake was: (1) mutual or (2) if unilaterally made by the bidder, so apparent that the contracting officer should have been on notice of the probability of the mistake.

62.26c - Recordkeeping

The contracting officer shall maintain records in the sale contract folder of all determinations made, the facts involved, and the action taken in each case.

62.27 - Posting the Bid

The sale officer designated to open bids shall, after reviewing them for responsiveness and mistakes, post the responsive bids:

1. Read the bids aloud to the persons present.
2. Have the bids recorded.
3. Determine the apparent high bidder.
4. Prepare an abstract of the bids to be distributed to bidders and other interested parties. Use form FS-2400-15 for all advertised sales made under Contract 2400-6(T), Contract 2400-3S(T)(P), and Contract 2400-4. Refer to section 62.27, exhibit 01, for instructions on completion of form FS-2400-15, Abstract of Bids. The form FS-2400-15, Abstract of Bids, is designed to implement the computerized Timber Information Manager (TIM). TIM enters much of the data automatically if the sale officer opening the bids electronically completes the form at the bid opening. The form may also be completed manually when bids are not entered into TIM.

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The sale officer shall safeguard the original of each bid until an abstract has been prepared and its accuracy verified. Allow bidders or other interested parties to inspect posted bids under the supervision of the sale officer, but do not allow the removal of the original bid from the bid opening site.

Forest Service Handbook 2409.18 – Timber Sale Preparation Handbook
Chapter 60 - Bid Opening – Gate 5
Amendment: 2409.18-2011-3
Effective date: October 05, 2011
62.27 - Exhibit 01

Instructions for Completion of Form FS-2400-15, Abstract of Bids

Section A. General Information.

Block 1 – Sale Number: Automatically entered by TIM or manually enter for all advertised sales.

Block 2 – Date of Bid Opening: Automatically entered by TIM or manually enter for all advertised sales.

Block 3 – Location of Bid Opening: Automatically entered by TIM or manually enter for all advertised sales.

Block 4 – Time: Automatically entered by TIM or manually enter for all advertised sales.

Block 5 – Sale Name: Automatically entered by TIM or manually enter for all advertised sales.

Block 6 – National Forest: Automatically entered by TIM or manually enter for all advertised sales.

Block 7 – Ranger District: Automatically entered by TIM or manually enter for all advertised sales.

Block 8 – Type of Bid: Automatically entered by TIM or manually enter for all advertised sales.

Block 9 – Salvage Sale Status: Automatically entered by TIM or manually enter for all advertised sales.

Block 10 – SBA Set-aside (Yes or No): Automatically entered by TIM or manually enter for all advertised sales.

Block 11 – Bid Guarantee Amount: Automatically entered by TIM or manually enter for all advertised sales.

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62.27 - Exhibit 01--Continued

Section B. Sale Information.

Column – Species: Automatically entered by TIM or manually enter for all advertised sales.

Column – Product: Automatically entered by TIM or manually enter for all advertised sales.

Column – Unit of Measure: Automatically entered by TIM or manually enter for all advertised sales.

Column – Estimated Quantity: Automatically entered by TIM or manually enter for all advertised sales.

Column – Advertised Rate: Automatically entered by TIM or manually enter for all advertised “Unit Rate Bid” sales.

Column – Minimum Acceptable Bid Rate: Automatically entered by TIM or manually enter for all “Total Sale Value Bidding” and “Weighted Average Bidding” advertised sales.

Column – Fixed Rate: Automatically entered by TIM or manually enter for all advertised sales that have products to be removed at a fixed rate.

Minimum Total Sale Value: Automatically entered by TIM or manually enter for all advertised sales.

Section C. Summary of Bidders.

Bidder’s name and bidder’s total bid value automatically entered by TIM or manually enter for all advertised sales.

Section D. Signatures.

Sale officer, that opened the bids, and a Forest Service witness shall sign the bids in ink (not electronically).

Distribute the completed form to bidders present at the bid opening, as an attachment to the apparent high bidder, the unsuccessful bidder, and to other interested parties.

62.3 - Oral Auction

At the stated date and hour for oral auction bidding, the sale officer shall formally announce that the opportunity to submit initial sealed bids has expired (sec. 62.2). Do not produce and publicly open initial sealed bids until this announcement has been made.

Open, review, and post initial sealed bids in accordance with sections 62.22 through 62.27. Only bidders on the posted list of initial sealed bids may participate in the oral auction.

62.31 - Auction Procedures

Before beginning the oral auction, the sale officer shall describe the auction procedure and restrictions, including the amount of time to be allowed between bids. If the sale is the subject of litigation, announce that award may be delayed pending resolution of the litigation. Also, announce that the sale of timber from National Forest System lands is subject to the Sherman Act and that pre-award communications among bidders about the sale could prejudice the Government's interest and constitute an antitrust violation. Give each bidder adequate time to bid. Use the following guidelines in conducting the auction:

1. If all the bidders submit qualifying bids in the same amount and pass without making a higher bid, the sale officer shall announce intent to reject all bids if oral bids do not follow. However, when it is in the Government's interest (salvage sales) to do so, follow the tie bid procedure (sec. 63.1).
2. The sale officer delegated the responsibility to conduct the auction should challenge conduct or behavior which the officer interprets to be collusive and refer immediately such incidents for investigation.
3. When the auction procedures call for a time limit between receipt of bids, announce the time remaining to bid not less than 15 seconds before expiration.
4. Permit short recesses at bidder's requests, allowing recess to one bidder at a time. Do not allow a general recess or allow bidders to discuss the bidding or their intent in the sale.
5. Accept no oral bid unless it results in a higher total than the previous bid.
 - a. The highest bid is the bid that gives the largest money return when the price bid is multiplied by the estimated sale amount. Do not include the value of bids for unestimated amounts of material or material subject to agreement after award.
 - b. Do not consider offers by bidders to change the conditions of sale in ways advantageous to the Government (for example, the bidder offers to build roads at no cost to the Government). If such offers are made, consider the desirability of rejecting all bids (sec. 64), revising the sale requirements, and readvertising.

6. Following each oral bid, make a written record showing the bidder and the amount of bid. Permit any bidder to inspect this record.
7. At the close of the auction, require the highest bidder to sign a bid form confirming the high bid.

Regional foresters may issue additional instructions covering oral auction procedures.

62.4 - Making the Tentative Sale Award

Make a tentative award orally to the apparent high bidder or authorized representative, if present. Document that the final award will be made by letter (see FSH 6209.12 for correspondence preparation instructions) and that there will be concurrent execution of the contract by both parties. Send the letter of notification by certified mail, return receipt requested, to the apparent high bidder. Include mandatory information in section 62.41 and when a financial determination of bidder's ability is needed, include information in section 62.42. Also include any provisions in sections 62.43 through 62.46 that apply to the circumstances of the bidder or pertain to the sale.

62.41 - Mandatory Information in all Tentative Sale Award Letters

The following information must be included in any tentative sale award letters to the apparent high bidder:

1. Mail Delivery Notation. Insert the following notation at the top of the letter below the date and before the inside address: **CERTIFIED, RETURN RECEIPT REQUESTED.**
2. Inside Address. Enter the purchaser's name and address.
3. Subject Line. Enter the name of timber sale and contract number.
4. Introductory Paragraph. Include the following introductory paragraph, completing the information identified by parentheses:

On (date), you were declared the apparent high bidder on the (name of sale) Timber Sale, Contract Number (#). A performance bond in the amount of \$(bond amount) will be required. Your bond may be secured with cash, corporate surety, deposited securities, irrevocable letter of credit, or assignment of savings account. Please inform me by (date) which type of bond you will provide for this sale.

5. Closing Paragraph. Include the following closing paragraph, completing the information in the parentheses:

We appreciate your bid for this national forest timber. If you have any questions regarding this matter, please call me at (telephone number) or contact me at (address). (Add if appropriate.) Enclosed is a copy of our Abstract of Bids for the above listed sale.

6. Signature Block. Enter the name and title of the contracting officer, for example:

JOHN DOE
Contracting Officer

7. Enclosures. List any enclosures, such as Bid Abstract, Financial Statement, or Request for Verification that are being sent with this letter.
8. Copies. List under cc and send copies to the district ranger and any other appropriate officials.

62.42 - Financial Determination of Bidder's Ability

1. Financial Information. If a financial determination of the bidder's ability to perform the work must be made, include the following paragraphs verbatim:

However, award of the sale will be withheld pending the outcome of a review to affirm your abilities as a responsible purchaser as required in Title 36, Section 223.101 of the Code of Federal Regulations (36 CFR 223.101). This rule mandates that the Contracting Officer determines that a purchaser: (1) has adequate financial resources to perform the contract or the ability to obtain them; (2) is able to perform the contract within the contract period; (3) has a satisfactory performance record on timber sale contracts; (4) has a satisfactory record of integrity and business ethics; (5) has, or is able to obtain, equipment and supplies suitable for logging the timber and for meeting the resource protection provisions of the contract; and (6) is otherwise qualified and eligible to receive an award under applicable laws and regulations.

We request that you submit data that shows your financial ability to carry out this timber sale contract. Although submission of the data is voluntary, 36 CFR 223.101 provides that we may withhold award of a timber sale until you submit a satisfactory showing of financial ability. In general, this demonstration of financial ability will require that you provide: (1) a showing that you have sufficient access to working capital to meet expected financial obligations over the next 12 months, and (2) a showing that your net worth, after consideration of potential default claims, is sufficient to sustain any future losses. You may use the enclosed Financial Statement, form FS-6500-24, and Request for Verification, form FS-6500-25, to submit the data. Please complete the forms fully or thoroughly explain any uncompleted parts. The following are steps you should take in establishing working capital, financial obligations, net worth, and projected gains and losses:

Step 1. If you have undergone a financial review by a Government agency in the last 12 months, another review may not be necessary. If a review has been done, then identify the agency, location, and date of the review, and we will let you know if additional information is needed. If a previous review has not been done, then proceed with step 2.

Step 2. If needed, identify all your affiliates by name and address. Describe the nature of the relationship, and how they are accounted for. In determining whether or not affiliation exists, consider the rule established in the Small Business Administration regulation at 13 CFR 121.103 that states, in part, that concerns are affiliates of each other when one concern controls, or has the power to control the other or a third party, or parties controls or has the power to control both. Factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships are considered in determining whether affiliation exists.

The following information is also required:

(1) For you and your affiliates, list all defaulted Federal (Forest Service, Bureau of Land Management, etc.) timber sale contracts in the following format:

Company Name	Timber Sale Name and Contract #	Agency	Damages Billed	Remaining Volume	Remaining Value

(2) Provide a credit report from a credit bureau for your company.

(3) List anticipated gains or losses on each current timber sale contract, by year, including the sale at issue and sales of affiliates. Anticipated gains and losses are needed to assess your ability over the long run to meet your existing commitments. We will assess this ability in connection with your company's and your affiliate companies' net worth and projected gains or losses, as well as your ability to meet payments for default damages.

(4) Submit a forecasted cash flow analysis that displays in detail the cash outlays and cash inflows expected to be experienced on the timber sale at issue, as well as all other sources and uses of cash for the period. This analysis should be of such detail that it identifies all sources and uses of cash. Include other business segments as well. The analysis must project realistic harvest and sale volumes for the period with related costs and income estimates. Your forecast should be compiled by an independent CPA and should follow the American Institute of Certified Public Accountant (AICPA) standards for "Accountants Services on Prospective Financial Information."

(5) Complete items 1 through 5 of the enclosed Request for Verification, form FS-6500-25, and forward the form to financial and other institutions where you have assets, such as cash and securities on deposit, so they can confirm directly to us the amounts indicated on your financial statements.

(6) In addition, please provide narrative documentation regarding your plans to complete the terms of the timber sale contract. Include information such as:

whether the road construction will be completed by you or subcontracted, whether the harvesting and all other contractual requirements will be completed by you or subcontracted, an inventory of logging equipment, a copy of any log purchase agreements that you have with regard to this timber sale, and any other pertinent information.

Specify the date the information is to be returned by (generally no more than 30 days). Concurrently, with requesting financial information from the apparent high bidder, notify the Albuquerque Service Center of the impending financial determination so they can assign an accountant to evaluate the information. Promptly forward the financial information to the Albuquerque Service Center upon receipt from the bidder. Base the determination on the information received by the due date specified in the tentative award letter, or any written extension authorized by the contracting officer. Before granting a request for additional time, consider whether the timber is in urgent need of removal and whether the award process can be concluded within the 90-day period of the bidder's firm offer.

2. Bidder Business Class Requirements. When making a financial determination, determine whether the bidder is organized under State law as a corporation, a partnership, or an individual entity, and also determine if the bidder is a small business. Add the appropriate additional paragraphs as follows:

a. Corporation. If the bidder is a corporation, add the following:

Complete a separate form FS-6500-24, Financial Statement, for you and each of your affiliates. In lieu of completing parts A, B, and C, attach a complete set of audited or reviewed financial statements for the last 3 complete fiscal years, which includes:

(1) A report by an independent Certified Public Accountant (CPA) on the financial statements.

(2) A balance sheet.

(3) An income statement.

(4) A statement of cash flow.

(5) Footnotes to the financial statements.

(6) A report on the internal control structure by the independent CPA completing the audited or reviewed statements, if prepared.

b. Individual or Partnership. If the bidder is an individual or partnership, add the following:

Attach the personal financial statement(s) prepared on form FS-6500-24, Financial Statement, and a complete set of Federal income tax returns for the last 3 years.

c. Small Business. If the bidder is considered to be a small business, add the following:

If we are unable to make a positive financial ability determination with the information you provide, I will forward the information you provided to the U.S. Small Business Administration (SBA) and will request a Certificate of Competency (COC) determination from that agency. If you are not familiar with the COC process administered by the SBA, please feel free to contact me.

d. Submission of Financial Data Regardless of Business Class. For all classes of bidders, add the following paragraph, completing the information identified by parentheses:

Submission of this data is voluntary. However, as provided in 36 CFR 223.101 and as described earlier in this letter, a timber sale may not be awarded until a satisfactory showing of requested items is submitted.

Financial and other information provided in support of your financial ability determination must be full, accurate, and complete to the best of your knowledge. The penalty for making false statements is prescribed in 18 U.S.C. 1001. The principal purpose of the financial statement is to protect the public interest by a showing of your current financial ability to complete this timber sale contract. We shall make no other use of this information. The general public, employees of the Forest Service, and other agencies not having duties related to award of this contract shall not have access to these financial data, except as authorized or required by law or pursuant to your written permission.

The preceding requested information must be furnished to this office, not later than (date).

62.43 - Other Provisions of Tentative Sale Award Letters

If the timber sale situation or the apparent high bidder meets any of the following circumstances, add the additional relevant statements and complete the information in the parentheses:

1. Road Construction Option. If bidder elected to have the Forest Service construct the roads, add the following, completing the information identified by parentheses:

In your sealed bid, you elected the option to have the Forest Service perform road construction. We are delaying award of the sale up to (number) days

pending the Forest Service's receipt of a satisfactory road construction bid from an independent contractor.

2. Bid Amount Exceeds \$10,000,000. If an EEO compliance review is required, add the following:

The total timber sale bid amount exceeded \$10,000,000. Therefore, an Equal Employment Opportunity pre-award compliance review by the Department of Labor must be completed prior to award. The Department of Labor has 30 days in which to complete their Equal Employment Opportunity compliance review. An additional 15 days may be required if the Director of the Department of Labor still has not made a final pre-award clearance determination. For further information, see the prospectus Item 14, Equal Employment Opportunity Compliance Review.

3. Additional Information Applicable Bid Guarantee. In addition, select one of the following options, fill in the blanks, and include in the sale award letter:

- a. Financial Ability Determination Only. If only a financial ability determination is needed, add the following:

Your bid guarantee in the amount of \$_____ will be retained until a determination has been made on your responsibility pursuant to 36 CFR 223.101. At that time, we will notify you, and if determined responsible, award the sale.

- b. Small Business Road Option Only. If only a statement concerning the small business road option is needed, add the following:

Your bid guarantee in the amount of \$_____ will be retained pending the Forest Service's receipt of a satisfactory road construction bid. At that time, we will notify you and award the sale.

- c. EEO Compliance Review Only. If only an EEO compliance review is needed, add the following:

Your bid guarantee in the amount of \$_____ will be retained until a pre-award clearance determination from the Department of Labor is made. At that time, we will notify you and award the sale.

- d. Financial Ability Determination and Forest Service Road Construction Option. If a financial ability determination must be made, and the bidder elected to have the Forest Service construct the road, add the following:

Your bid guarantee in the amount of \$_____ will be retained until a determination has been made on your responsibility pursuant to 36 CFR

223.101 and the Forest Service receives a satisfactory road construction bid. At that time, we will notify you and award the sale.

- e. Financial Ability Determination and EEO Compliance. If both a financial ability determination and an EEO compliance review are required, add the following:

Your bid guarantee in the amount of \$ _____ will be retained until a determination has been made on your financial ability and related responsibility pursuant to 36 CFR 223.101, and a pre-award clearance determination from the Department of Labor is made. At that time, we will notify you and award the sale.

- f. Road Construction Option and EEO Compliance Review. If the bidder elected to have the Forest Service construct the road and an EEO compliance review is required, add the following:

Your bid guarantee in the amount of \$ _____ will be retained until a pre-award clearance determination from the Department of Labor is made, and the Forest Service receives a satisfactory road construction bid. At that time, we will notify you and award the sale.

- g. Financial Ability Determination, EEO Compliance, and Road Option. If a financial ability determination must be made, the bidder elected to have the Forest Service construct the road, and an EEO compliance review is required, add the following:

Your bid guarantee in the amount of \$ _____ will be retained until a determination has been made on your responsibility pursuant to 36 CFR 223.101, the Forest Service receives a satisfactory road construction bid, and a pre-award clearance determination from the Department of Labor is made. At that time, we will notify you and award the sale.

4. Cash Bid Guarantee. If the bidder submitted a cash bid guarantee, add the following paragraph with the blanks filled in:

You may request in writing that your cash bid deposit of \$ _____ be applied toward the amount of the down payment. If you elect this option, please make your request to me in writing by (date).

62.44 - Additional Discretionary Provisions of Tentative Sale Award Letters

1. The contracting officer may add additional instructions to apparent high bidder requiring the bidder to provide missing information such as a tax identification number or other minor informalities in the bid that need correcting (sec. 62).
2. The contracting officer may add any specific presale award requirements to the letter.

62.45 - Unsuccessful Bidder Letter

Send a letter to all unsuccessful bidders returning their bid guarantees and providing other information as needed. Refer to exhibit 01 for a sample unsuccessful bidder letter and mandatory provisions that must be used.

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62.45 - Exhibit 01

Unsuccessful Bidder Letter



United States
Department of
Agriculture

Forest
Service

Name of Forest
Service Unit

Address of Forest
Service Unit

File Code: 2450

Date:

Purchaser's Name

Address line 1

Address line 2

CERTIFIED, RETURN RECEIPT REQUESTED

Re: (Name of Timber Sale, Contract Number [#])

Dear Sir/Madam:

Thank you for bidding on the above listed timber sale on **(date)**. We are returning your bid guarantee in the amount of \$_____, which accompanied your bid on the above designated timber sale.

(If the bid was received late and not opened substitute for above paragraph.) We received your bid in response to the timber sale advertisement for the above listed timber sale after the time for opening specified in the advertisement published in the **name of publication** newspaper on **date of advertisement**. The bid opening was scheduled for **(date and time of bid opening)**, and your bid was received on **(date and time)**. Your unopened bid is enclosed. **(Include additional information, if applicable here:)**

(If the bid was determined to be non-responsive, section 63.2, add the following.) Your bid failed to meet the essential requirements of the sale offering. Therefore, I have declared your bid to be non-responsive and have rejected your bid. The reason your bid is non-responsive is because you: **(Add the following applicable statements to identify the reason the bid was non-responsive, as appropriate.)** (1) Elected Government construction of specified roads in Block 18 of the bid form, FS-2400-14, but you indicate your intention to build a portion of the specified road. The election must include all of the specified roads or none; (2) Left one species unbid; (3) Bid one or more species at less than the advertised rate; (4) Altered the units of measure; (5) Failed to include a bid guarantee; (6) Bid on a small business set-aside sale and you are a **(large business or non-qualifying small business)**; (7) Imposed conditions of bid or award on the bid form; and (8) **(other)**.

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(Name of apparent high bidder) of (address) was the apparent high bidder with a total sale value bid of \$_____. (For unit rate bid sales add the following table.) In addition, the table below lists the bid rate per unit of measure for the apparent high bidder:

Species	Product	Unit of Measure	Estimated Quantities	Bid Rate per UOM \$

(Contracting officer may add any specific information here:)

We appreciate your bid for this national forest timber. Do not hesitate to call us if we can be of assistance. (Add if appropriate.) In addition, enclosed is a copy of our abstract of bids for the above listed sale.

Sincerely,

(Name of CONTRACTING OFFICER)
Contracting Officer

(Add if appropriate.) Enclosure: (such as Abstract of Bids, form FS-2400-15)

cc: (Name of Ranger District) RD
(Other)

62.46 - Tentative Award When Litigation is Filed

When litigation potentially affecting the status of the sale is filed prior to contract award, follow the procedures in FSM 2431.31b and prepare the tentative sale award letter (sec 62.41), but replace the introductory paragraph with the following:

On (date) you were declared the apparent high bidder on the (name of sale) Timber Sale, Contract Number (#). The sale (name of sale) is the subject of litigation. The Forest Service may withhold award until the litigation is resolved. If the litigation is not resolved within 90 days of the bid date, you may be provided an opportunity to extend your firm offer per item 21 of your bid form. At any time prior to the expiration of your firm offer, and any extension thereof, you may request in writing to have the contract awarded upon first entering into a Pre-Award Waiver, Release and Limitation of Liability Agreement. Upon receipt of your request, the Forest Service will determine whether to enter into Pre-Award Waiver, Release and Limitation of Liability Agreement. An example of a Pre-Award Waiver, Release and Limitation of Liability Agreement may be obtained from this office.

If a financial determination of the bidder's ability to perform the contract must be made and the sale is not in urgent need of harvesting, include the following closing paragraph to the section 62.42 paragraphs:

Upon your written request, including an agreement to extend your firm offer, the requirements for furnishing financial information may be deferred until you have submitted a signed Pre-Award Waiver, Release and Limitation of Liability Agreement, or you have been notified that the litigation has been resolved.

62.5 - Informal Bids on Short-Notice Sales

Use the general procedure in section 62.2 to review bids received for completeness. When receiving informal bids, do not execute the contract or permit until the bidder has met all requirements specified on the bid form.

63 - Special Bidding Situations

63.1 - Tie Bids

When two or more bidders tie for the high bid, consider whether or not rejection of all bids would be in the Government's best interest (sec. 64). For auction bidding, do not permit further bidding among the high bidders after bidding time has run out. If it is not in the Government's interest to reject all bids, determine the apparent high bidder by drawing lots among the high bidders. If rejection of all bids is deemed to be in the Government's interest, readvertise

(sec. 56 of this handbook) at the highest price bid, and no less than the previously advertised value. Advertise for not less than 30 days. Where there is reason to believe that the receipt of equally high bids constitutes collusive behavior, report the circumstances pursuant to instructions in section 67.

63.2 - Non-responsive Bids

Any bid that fails to conform to the essential requirements of the sale offering must be considered non-responsive and rejected (48 CFR 14.404-2). The following are examples of non-responsive bids:

1. A bidder elects Government construction of specified roads in Block 18 of the bid form, FS-2400-14, but indicates the intention to build a portion of the specified road. The election must include all of the specified roads or none.
2. A bid with one species unbid.
3. A bid with one or more species bid at less than the advertised rate, unless it is considered a mistake (sec. 62.24 and 62.25) or a minor informality (sec. 62.23).
4. A bid in which the bidder has altered the units of measure.
5. A bid without a bid guarantee (sec. 62.23), unless one of the following exceptions apply:
 - a. No other acceptable bid occurs and acceptance of the bid best serves the interest of the Government (Comptroller General's Decisions B-137319 and B-142869).
 - b. The bidder remedies the oversight before commencement of oral bidding in oral auction sales (Comptroller General Decision B-173630) (sec. 62.23).
6. Bids from large businesses or non-qualifying small businesses on a small business set-aside sale.
7. Any bid received with bidder-imposed conditions of bid or award.

64 - Rejection of All Bids

(See 36 CFR 223.100.) Avoid unnecessarily rejecting all bids when there is intent to reoffer the timber. After bid opening, the bidder's intention to bid in auction sales and actual bid prices has been publicly revealed. The bidder's evaluation of the market as it pertains to this particular sale has been revealed. When bids are rejected, the interests of high bidders are prejudiced and their competitors have an unfair advantage in bidding on the reoffering. In making a determination to reject all bids, take care to avoid an arbitrary action detrimental to the interest of the United States and the competitive bidding system (Comptroller General's Decision B-140175). Refer a decision to reject all bids to the regional forester for review and approval.

After a decision to reject all bids is approved, offer the timber sale again by readvertising for not less than 30 days. When the reoffered sale occurs during the same fiscal year for substantially the same timber under substantially the same contract terms, the sale should be reoffered using the sealed bidding method. However, consider changing the bidding method when necessary or desirable to ensure competition or to minimize opportunities for collusion. Notify each person or firm on the mailing list for the first offering, plus others that submitted a bid prior to reoffering the sale.

When it is necessary to cancel or correct an advertisement for sufficient reasons, including extension of opening date, the sale officer shall return, unopened, bids that were already received. Return unopened bids in such a way as to avoid making the contents public knowledge. Returning unopened bids in such circumstances does not constitute a rejection of those bids.

65 - Covenant Against Contingent Fees

Form FS-2400-14, Bid for Advertised Timber, and the timber sale contract contain a statement regarding employment of, or payment to, an entity hired to obtain the contract for the purchaser on a contingent basis (48 CFR 3.4). When there is specific evidence or other reasonable basis to suspect one or more violations of the terms or conditions of independent price determination, follow the procedures in 48 CFR 3.405.

To resolve such a case, determine whether or not the fee paid, or any portion thereof, depended upon the success of the effort to obtain the sale contract. If the fee or commission was not a contingent fee, then there was no violation of the regulation. If it was a contingent fee, but it was paid to a bona fide employee or established commercial or selling agency maintained by the purchaser for securing business, it did not violate the regulation.

The sale officer is responsible for making the decision in each case unless the case is questionable and must be routed through the appropriate line officers to the regional forester, who shall obtain advice from the regional attorney.

Contracting officers shall maintain records together with all other pertinent data, in the contract folder (48 CFR 3.406).

66 - Bid Protests

By agreement with the Forest Service, the General Accounting Office (GAO) decides the bid protests concerning the sale of national forest timber. Follow procedural rules published at 4 CFR Part 21. This is the only bid protest rule applicable to Forest Service timber sales. Be aware that some of the rule applies to procurements (acquisitions) only. Officials acting as sale officers in opening bids and conducting auctions shall be familiar with the portion of the rule that applies to sales of timber and timber products. Additional information and examples of applications of the regulation are published in a General Accounting Office (GAO) booklet entitled, “Bid Protests at GAO: A Descriptive Guide,” (Ninth Ed., 2009) (Report Number: GAO-09-471SP). Copies may be obtained from the U.S. General Accounting Office, P.O. Box 6015, Gaithersburg, MD 20884-6015, or retrieved off the Internet at [U.S. Government](http://www.gao.gov)

[Accountability Office \(U.S. GAO\)](#). Contracting Officers should check the GAO Web site for newer additions prior to processing any bid dispute. Earlier editions are not consistent with the regulations at 4 CFR 21 and must not be used.

Timeliness is critical when handling bid protests. If a time problem develops, immediately notify the regional coordinator or, if the coordinator is not available, contact the Washington Office coordinator directly for consultation to ensure deadlines are met, or to enable the Washington Office coordinator to notify GAO through OGC that deadlines cannot be met.

Use telephone, computer communication, overnight mail services, and facsimile services, when appropriate. If possible, consult with the appropriate forest or regional coordinator in advance to ensure they are kept informed of developments.

Exhibit 01 displays the process that is normally followed. If exceptions occur, attempt to be as consistent as possible with this process.

Generalized Bid Protest Procedure

Action By	Action
Interested Party	<p>File written protest within 10 days of bid opening to the General Accountability Office (GAO), addressed as follows: General Counsel, General Accountability Office, 441 G Street, N.W., Washington, DC 20548, Attention: Procurement Law Control Group (sec. 66.1). The protestor shall furnish a complete copy of the protest, including all attachments, to the contracting officer (4 CFR 21.1 (e)). Refer to sec. 66.1.</p> <p>Required contents of the bid protest are listed at 4 CFR 21.1.</p> <p>Request documents from the contracting officer (sec. 66.3).</p>
General Accounting Office (GAO)	<p>Within 1 day of a protest receipt, notify the Washington Office Bid Protest Coordinator, Forest Management, by telephone with a follow-up written notice to the Forest Service and an acknowledgment to the protestor by mail (4 CFR 21.3).</p>
Washington Office Bid Protest Coordinator	<p>Within 24 hours of telephone notice, notify the region, Washington Office, Office of the General Counsel (OGC), and, if necessary, the contracting officer.</p>
Contracting Officer	<p>Immediately give notice to the purchaser if award has been made or, if no award has been made, to all bidders (4 CFR 21.3).</p> <p>Suspend operations, if required (sec. 66.4).</p> <p>File a report to Washington Office, Forest Management, through the regional office within 15 days of notification of the protest (sec. 66.2).</p>
Office of the General Counsel (Washington Office)	<p>Within 30 days of the telephonic notice, prepare and submit a final Forest Service report to GAO with copies to the protestor, any interveners, Washington Office and regional office coordinators, and the contracting officer (sec. 66.2).</p>
GAO	<p>Conduct hearing, if necessary, and issue decision within 100 days of protest filing.</p>

66.1 - Filing a Protest

The contracting officer shall not accept a bid protest. Inform potential protesters to submit a protest to the General Accountability Office (GAO) at the following address: General Counsel, General Accountability Office, 441 G Street, N.W., Washington, DC 20548, Attention: Procurement Law Control Group. As of the date of this amendment, the fax number is (202) 512-9749. Inform potential protesters that they must comply with GAO's procedures specified in the most current edition of "Bid Protests at GAO: A Descriptive Guide" (sec. 66). Also inform potential protesters that protests submitted via the U.S. Postal Service may be sent to a center to be irradiated delaying delivery to GAO. GAO determines timeliness (4 CFR 21.1(b) and 21.2).

Document whether protesters provide the contracting officer a complete copy of the protest, including all attachments, within 1 working day of filing with GAO (4 CFR 21.1(e)). Notify the regional coordinator immediately if a copy is not received within this time limit.

66.11 - Protest of Small Business Size Class

Follow procedures in section 94.2 of this handbook. This type of protest is not considered to be a bid protest; however, a bid protest may result.

66.2 - Agency Report

Gather pertinent materials to respond to a protest immediately upon notification of filing, or if the contracting officer determines that a protest will be filed. Route protest reports through the regional office to the Washington Office, Forest Management staff, within 15 days of notice by GAO that a protest has been filed. This gives the Washington Office, Office of the General Counsel (OGC) time to prepare and to obtain concurrences on the report before release to GAO, required to be received within 30 days after the telephone notice of the protest.

The report must include all documents relevant to the protest (4 CFR 21.3(d)), such as the following:

1. Copy of the protest.
2. High bid form.
3. List of bidders and bidding record.
4. Completed form FS-2400-17, Report of Timber Sale - Convertible and Non-convertible Products.
5. Complete copy of the solicitation (advertisement, prospectus, other documents).
6. Witness' and bidder's statements.

7. Contracting officer's statement, including response to allegations, findings, actions taken, and recommendations.
8. Documents requested by protester, identifying any that should be withheld and why.
9. List of names and telephone numbers of office and field personnel who may know of the protest circumstances.
10. Any other evidence or information deemed necessary or helpful for determining protest validity.

Bind and tab all sections of the report and number all pages consecutively. Send three copies to the regional office (one for the region and two for the Washington Office) to be received in the regional office within 12 working days of the (GAO) notice so that the report can be reviewed and submitted to the Washington Office within the 15-day time period.

The Office of the General Counsel (OGC) submits the report to GAO and sends copies to the protestor, any interveners, Washington Office and regional office coordinators, and the contracting officer.

66.3 - Protester's Request for Documents

Provide documents in response to a protester's request for documents. Include in the contracting officer's report, copies of all documents requested and identify documents recommended to be withheld and the reasons for withholding them. The Washington Office OGC must evaluate the reasons, and if advisable, make a similar recommendation to GAO. GAO will make the final decision to release or withhold requested document (4 CFR 21.3(c)-(h)).

Do not provide any requested documents to the protester that have not already been publicly distributed. Examples of material that may be released include the prospectus, bid form, and other similar information.

If a protester requests additional documents within 2 days of receipt of the Forest Service's report, the Forest Service must respond within 5 days. Therefore, send the documents immediately (withholding recommendations, if any, and the reasons why each specific document should be withheld) so that they are in the Washington Office within 3 days after the request is received.

66.4 - Award or Suspension of Operations

Do not award a sale contract (sec. 72.1 of this handbook) if a protest has been filed. If the contracting officer has reason to believe a sale may be protested, do not award it for at least 12 days after bid opening. However, if there is an urgent need to award, such as removal of timber on a public works road right-of-way or rapidly deteriorating timber, the Chief may authorize award of the contract upon a written finding that urgent and compelling circumstances that significantly affect interests of the Government will not permit waiting for the GAO's decision, and after GAO is advised of that finding (31 U.S.C. 3553 (c)(2)). The contracting officer must

request permission immediately from the Chief through the regional Office when circumstances warrant awarding or invoking the GAO express option (sec. 66.6).

If a bid protest is received after the contract has been awarded, but within 10 days of the bid opening and the contract has not been executed, the contracting officer shall not execute the contract while the protest is pending. If the contract has been executed, the contracting officer shall suspend operations pursuant to contract provision B/BT8.33 after consulting with the regional attorney. Performance of the contract may not be resumed while the protest is pending (4 CFR 21.6 and 31 U.S.C. 3553 (d)(1)). However, if there is an urgent need to award, such as removal of timber on a public works road right-of-way or rapidly deteriorating timber, the Chief may authorize performance of the contract upon a written finding that performance of the contract is in the best interest of the United States; or that urgent and compelling circumstances that significantly affect interests of the United States will not permit waiting for GAO's decision concerning the protest; and after GAO has been notified (31 U.S.C. 3553 (d)(2)). If such circumstances exist, the contracting officer shall request permission immediately from the Chief through the regional office to continue contract performance or to invoke the GAO express option (sec. 66.6).

Contacting officers need to recognize potential bid protests and not award or execute the contract if there is a possibility of a bid protest unless the conditions for an urgent need to award are met.

66.5 - Conferences and Fact Finding

The GAO reserves the right to schedule a hearing on the merits of the protest or a fact-finding hearing (4 CFR 21.7).

66.6 - Express Option

An express option requires resolution by the General Accounting Office (GAO) within 65 working days (4 CFR 21.10).

GAO rarely uses this option and does so only in cases that can be reasonably concluded in a 65-day period. However, upon request, GAO must consider the feasibility of using the express option for resolving a particular case. A request to use this option must be received by the GAO, through appropriate Forest Service channels, not later than 5 days after the protest is filed. GAO must promptly notify the parties whether the case will be handled using the express option.

If the express option is used, the following schedule applies instead of the schedule set out in sections 66.2 and 66.3 (4 CFR 21.3 and 21.7):

1. OGC must file a complete report with GAO and the parties within 20 days after it receives notice from GAO that the express option will be used. The contracting officer shall route protest reports through the regional office to Washington Office, Forest Management staff, within 10 days of notice by (GAO) that a protest has been filed.
2. The protestor's comments on the report must be filed with GAO and the other parties within 5 days after receipt of the report.

66.7 - Final Disposition

When a decision is made, the Washington Office, Forest Management Bid Protest Coordinator shall notify the regional office of the final outcome of the bid protest.

Do not award a sale under protest until notified that either final disposition has been decided or special permission has been granted for early award (sec. 72.1 of this handbook).

Suspension of a sale already awarded and under protest is considered lifted upon affirmation of agency action by GAO.

67 - Identifying and Reporting Non-Competitive Bidding

67.02 - Objective

To carry out the requirements of section 14(e)(1) and (3) of the National Forest Management Act of 1976, forest officers responsible for the administration of national forest timber sale programs shall monitor for instances of non-competitive bidding or possible collusive behavior.

67.03 - Policy

Bid monitoring is a fundamental Forest Management staff function that includes establishing adequate measures to promptly identify patterns of non-competitive bidding or collusive behavior and reporting instances of collusive and non-competitive bidding to the Attorney General.

67.04 - Responsibility

It is the responsibility of any Forest Service employee, who observes collusive practices or receives information about possible collusive practices, to notify immediately either the forest supervisor or the Department of Justice (DOJ) using the hotline (sec. 67.2). Watch for any suspicious situation.

67.05 - Definitions

The following definitions apply to this section:

Antitrust Violations. Any violation of antitrust laws, such as collusive bidding or other illegal restraint against competition.

Bid Monitoring System. A system to detect collusive bidding among potential purchasers using computer worksheets, graphic displays, maps, and direct observations.

Bid Ratio. The ratio of total contract sale price to minimum acceptable bid price. For example, if a minimum bid price is \$1,000 and a total contact sale price is \$1,100, the bid ratio is 1.10.

Bid Rigging. An agreement to fix bids among independent purchasers.

Bid Rotation. Purchasers take turns as high bidder on the basis of a rotation, sale size, location, or other sale characteristics.

Bid Suppression. Purchasers who would otherwise bid, refrain from bidding, or withdraw a bid to ensure acceptance of a competitor's bid.

Collusion. Any agreement among competitors that fixes bid prices. Also referred to as collusive bidding, bid rigging, or price fixing, depending on the sale or procurement context.

Complementary Bidding. Purchasers submit token or unresponsive bids to give the appearance of bidding and enable a competitor to submit the winning bid.

Direct Sale. A timber sale in which the Forest Service and the purchaser negotiate the contract price without advertisement or competitive bidding.

Fair Market Value. See FSH 2409.18, section 40.5.

Geographic Bidding. Same as Territorial Allocation.

Market Division. Purchasers agree to refrain from competing in a designated portion of the market, such as a particular product or species mix.

Overbid. The difference between the minimum bid price and the successful bid price. A measure of the amount of competition for a particular sale.

Preclusive Bidding. An attempt to maintain dominance in a territory by bidding as high as necessary to defeat other competitors who offer a bidding challenge. Purchasing prior sales at minimum prices provides the economic base to bid as high as necessary, even beyond the economic break-even point of a sale.

Price Fixing. See Collusion.

Sale Sharing. An apparent variation of the subcontracting form of collusive bidding in which non-competing purchasers share the sale by harvesting different areas of a sale, alternating delivery of harvested timber, or other means, without regard to species or end product.

Strict Rotation Pattern. A method of alternating sales whereby each member of a group of purchasers takes a turn in submitting the winning bid according to a chronological sale sequence.

Subcontracting. Unsuccessful bidders or non-bidders receive subcontracts from the successful high bidder as a reward for submitting a non-competitive, non-responsive, or no bid.

Territorial Allocation. Purchasers divide geographical areas and agree not to compete in some areas.

Token Bidding. In the context of collusive bidding, a bidding pattern designed to give the appearance of true competition, but not truly competitive pricing levels. Synonymous with complementary bidding.

67.1 - Monitoring for Non-competitive Bidding Patterns

To monitor timber sale bidding, forest officers shall use a computerized bid monitoring system, graphic data displays, and direct observation of collusive bidding practices to assist in identifying bid patterns and bid pattern changes over time for a monitoring unit. Use the computer bid monitoring system and graphic data displays to monitor all formally advertised sales \$2,000 and over that have a completed form FS-2400-17 entered into the Timber Information Manager (TIM). All offices that conduct bid openings are required to monitor timber sale bidding for instances of non-competitive bidding or possible collusive bidder behavior.

Monitoring units are not bound by conventional or administrative unit boundaries and may include national forests, a ranger district, groups of ranger districts, or other logical areas. To help define a monitoring unit, consider the product market area, general sales location relative to production sites, and past bidding patterns. Unusual bid patterns or changes in bid patterns within these areas may indicate antitrust activity.

Use the computerized bid monitoring system in the TIM to produce standard and customized worksheets (sec. 67.13). The standard worksheets are designed to monitor bidding patterns on a ranger district or national forest. Alternative bid monitoring units, for example, two national forests combined into one bid monitoring unit, are required to develop customized reports.

In addition to analyzing bid patterns, bid monitoring involves examining individual sale bid records to characterize a firm's bidding behavior. For example, compare local firms' bidding behaviors to bidding behavior exhibited by non-local firms.

Look for geographic patterns that cannot be explained by such factors as economics, transportation, or other factors. Where timber supply and mill capacity suggest a certain level of competition, check to see if some qualified bidders offer token bids.

67.11 - Access to the Monitoring System

Limit knowledge of and access to the monitoring system procedures to personnel with monitoring responsibility. Handle access and analyses results requests in accordance with the Freedom of Information Act and Privacy Act (FOIA) requirements (FSM 6270). Exemption 7 of the Freedom of Information Act refers to records and techniques used to prevent collusive bidding for National Forest System timber (FSH 6209.13, sec. 11.65). Coordinate FOIA requests through the Washington Office, Forest Management and Freedom of Information Act staff.

67.12 - Bid Monitoring Plan

Each office, both district and national forest, that conducts bid openings for timber sales must develop a bid monitoring plan. The minimum requirements of a bid monitoring include:

1. Cover Page. List the region, monitoring unit, person preparing the plan, person(s) reviewing, and person approving the plan. The monitoring plan must be approved by the highest-ranking line officer in the monitoring unit.
2. Introduction. Discuss plan objectives, line and staff responsibilities, frequency of bid monitoring, and line officer review.
3. Narrative Description of the Monitoring Unit. Include descriptions of geographic area, industry composition, timber sources (supply), national forest timber dependencies (demand), market trends, and trends in average yearly volume under contract.
4. Historical Bidding Analysis. Discuss the historical analysis of bidding patterns over the last 4 years. Include such items as mix of large and small businesses, mix of manufacturers and non-manufacturers, product mix, species or species group mix, bid method (sealed versus auction), average number of bidders, and average bid ratio.
5. Computerized Bid Monitoring System. Discuss which standard worksheets are to be retrieved from TIM and how often, the need for customized TIM worksheets, and how each worksheet is to be analyzed.
6. Graphical Displays. Discuss which data from the TIM computerized monitoring worksheets is to be displayed graphically and how. Discuss how this graphical displayed data is to be analyzed.
7. Map Displays. Discuss the need for, and types of maps to be maintained.
8. Direct Observation. Discuss how national forest bid officers are to conduct direct observation of possible collusive bidding behavior or recognize evidence of non-competitive bidding.
9. Report Format. Discuss the format of the regional and/or national bid monitoring report and timeframes for completion.
10. Training. Discuss procedures to review training needs and to assure timely training for new employees and periodic retraining. Report accomplishments in the annual report (sec. 67.18).
11. Oversight. Discuss how bid monitoring data are included in timber and log accountability audits (FSH 2409.15, sec. 28) and activity reviews (FSM 1410).
12. Recordkeeping. Discuss how the bid monitoring analysis and resulting reports are filed, maintained, and updated.

The approving line officer shall review implementation of the bid monitoring plan on a quarterly basis and document these reviews by letter to the file. The bid monitoring plan must be reviewed annually to determine if updating is required.

67.13 - Computerized Bid Monitoring System

The computerized bid monitoring worksheets obtained from TIM provide units the ability to analyze specific bids and bidding patterns. As a minimum, retrieve worksheets on a quarterly basis. Each standard worksheet must be run for the current quarter, current fiscal year, and the previous 3 fiscal years. Compare these two worksheets to identify possible trends that might indicate bid collusion. The following standard worksheets may be retrieved from TIM:

1. **BM-01 Bidder Record.** Use this worksheet at the ranger district level to generate a list of sales offered during a specified time period. The information includes the sale name and the list of bidders and value of their bid. Information for each bidder is listed as name, tax identification number (TIN), size, and Small Business Administration (SBA) class. Review of TIN numbers can allow sale officers to ensure that bidders are not bidding under different names, to differentiate between bidders with identical names, and to identify codes for electronic transfer of funds to the purchaser.
2. **BM-02 Green Sales.** Use this worksheet at the ranger district level for bid monitoring to compare the average overbid value, average number of bidders, and average bid ratio for all green sales by size class of sales, SBA set-aside sales, specified road work in sales, and bid method. Use the worksheet to monitor the advertised rate as a percentage of bid rate, per requirements in FSM 2422.1.
3. **BM-03 Salvage Sales.** Use this worksheet at the ranger district level to compare the average overbid value, the average number of bidders, and the average bid ratio for all salvage sales by size class of sale, SBA set-aside sales, specified road work in sales, and bid method. The worksheet can also be used to monitor the advertised rate as a percent of bid rate per requirements in FSM 2422.1.
4. **BM-04 Bidder Performance on Green Sales.** Use this worksheet at the ranger district level to compare the number of green sales offered to the number of green sales the bidder bid on. Also, use the worksheet to compare the bidder's average overbid value, average number of bidders on sales the bidder bid on, and average bid ratio for sales the bidder bid on for all green sales by size class of sale, SBA set-aside sales, specified road work in sales, and bid method.
5. **BM-05 Bidder Performance on Salvage Sales.** Use this worksheet at the ranger district level to compare the number of salvage sales offered to the number of salvage sales the bidder bid on. Also, use the worksheet to compare the bidder's average overbid value, average number of bidders on sales the bidder bid on, and average bid ratio for

sales the bidder bid on for all salvage sales by size class of sale, SBA set-aside sales, specified road work in sales, and bid method.

6. BM-06 Bidder Success on Green Sales. Use this worksheet at the ranger district level to compare the number of sales offered to the number of sales the bidder bid on, including bidder rank. It calculates a bidder success ratio that can be used to compare bidders.

7. BM-07 Bidder Success on Salvage Sales. Use this worksheet at the ranger district level to compare the number of sales offered to the number of sales the bidder bid on, including bidder rank. It calculates a bidder success ratio that can be used to compare bidders.

8. BM-08 Bidder Record. Use this worksheet at the national forest level to generate a list of sales offered during a specified time period for each ranger district. The information includes the sale name and the list of bidders and value of their bid for that sale. Information for each bidder is listed, such as name, tax identification number (TIN), size, and SBA class. The TIN can be used to ensure that bidders are not bidding under different names, to differentiate between bidders with identical names, and to transfer funds electronically to the purchaser.

9. BM-09 Green Sales. Use this worksheet at the national forest level to compare the average overbid value, average number of bidders, and average bid ratio for all green sales by size class of sale, SBA set-aside sales, specified road work in sales, and bid method for each ranger district. The worksheet can be used by the national forest to monitor the advertised rates as a percentage of bid rates per requirements in FSM 2422.1.

10. BM-10 Salvage Sales. Use this worksheet at the national forest level to compare the average overbid value, the average number of bidders, and the average bid ratio for all salvage sales by size class of sales, SBA set-aside sales, specified road work in sales, and bid method for each ranger district. The worksheet can be used by the national forest to monitor the advertised rates as a percentage of bid rates per requirements in FSM 2422.1.

11. BM-11 Bidder Performance on Green Sales. Use this worksheet at the national forest level to compare the number of green sales offered to the number of green sales the bidder bid on for each ranger district. Also, the worksheet compares the bidder's average overbid value, the average number of bidders on sales the bidder bid on, and the average bid ratio for sales the bidder bid on for all green sales by size class of sale, SBA set-aside sales, specified road work in sales, and bid method.

12. BM-12 Bidder Performance on Salvage Sales. Use this worksheet at the national forest level to compare the number of salvage sales offered to the number of salvage sales the bidder bid on for each ranger district. Also, the worksheet compares the bidder's average overbid value, the average number of bidders on sales the bidder bid on, and the average bid ratio for sales the bidder bid on for all salvage sales by size class of sale, SBA set-aside sales, specified road work in sales, and bid method.

13. BM-13 Bidder Success on Green Sales. Use this worksheet at the national forest level to compare the number of green sales offered to the number of green sales a bidder bid on and the bid rank for each ranger district. Also, the worksheet compares the bidder's average overbid value, the average number of bidders on sales the bidder bid on, and the average bid ratio for sales the bidder bid on for all green sales by size class of sale, SBA set-aside sales, specified road work in sales, and bid method. This worksheet includes bidder success ratio data that can be used to compare bidders.

14. BM-14 Bidder Success on Salvage Sales. Use this worksheet at the national forest level to compare the number of sales offered to the number of sales the bidder bid on and bid rank for each ranger district. Also, the worksheet compares the bidder's average overbid value, the average number of bidders on sales the bidder bid on, and the average

bid ratio for sales the bidder bid on for all salvage sales by size class of sale, SBA set-aside sales, specified road work in sales, and bid method. This worksheet includes bidder success ratio data that can be used to compare bidders.

15. BM-15 Forest Bidder Performance. Use this worksheet at the regional level to compare national forest performance on green and salvage sales to other national forests and/or regional averages for average advertised value, average high bid value, average overbid value, average number of bidders, and average bid ratio. The worksheet can be used by the region to monitor the advertised rates as a percentage of bid rates per requirements in FSM 2422.1.

16. BM-16 Forest Bidder Success on Green Sales. Use this worksheet at the regional level to compare the number of green sales offered by the number of green sales the bidder bid on and bidder rank by national forest. It includes a bidder success ratio that can be used to compare bidders.

17. BM-17 Forest Bidder Success on Salvage Sales. Use this worksheet at the regional level to compare the number of salvage sales offered by the number of salvage sales the bidder bid on and bidder rank by national forest. It includes a bidder success ratio that can be used to compare bidders.

18. BM-18 Regional Bidder Performance. Use this worksheet at the National level to compare regional and national forest performance to other region's or national forest's averages for average advertised value, average high bid value, average overbid value, average number of bidders, and average bid ratio for green and salvage sales. The worksheet can be used by the national forest to monitor the advertised rates as a percentage of bid rates per requirements in FSM 2422.1.

67.14 - Graphical Display of Bidding Patterns

The following data from TIM worksheets is graphically displayed: weighted average bid ratio, weighted average number of bidders, average overbid for total sale value for green and salvage sale, weighted average overbid value, and market share for each purchaser. Maintain graphs to

compare the current fiscal year to the period containing the current fiscal year and previous 3 fiscal years. Update graphs annually to assist in bid monitoring analysis and in completion of the annual report (sec. 67.18).

67.15 - Map Displays

As a minimum, prepare and maintain a map to display the location of each timber purchaser within the monitoring unit and the location of each sale for the current fiscal year and previous 3 fiscal years. National forests and districts should consider the applicability of map production from Geographical Information System (GIS) data and/or using IBM architecture. Maintain maps quarterly.

67.16 - Bid Monitoring Analysis

The following findings from analysis of the TIM bid monitoring worksheets, graphic displays, and maps may constitute bid collusion or evidence of non-competitive bidding:

1. A significant reduction in overbid percentage for the monitoring unit for a fiscal year and current quarter, or current fiscal year, when compared to the previous 3 fiscal years.
2. A significant reduction in the average number of bidders for the monitoring unit for a year and current quarter, or current fiscal year, when compared to the previous 3 fiscal years.
3. An increase in the average number of no-bid sales for the monitoring unit for a fiscal year and current quarter, or current fiscal year, when compared to the previous 3 fiscal years.
4. The same bidder has been the high bidder on successive sales over a period of time.
5. A bidder is purchasing significantly more or less volume over a period of time.
6. There is an inexplicably large dollar margin between the winning bid and all other bids.
7. There is an apparent pattern of purchasers being high bidder in geographical areas.
8. There is an apparent pattern of bid rotation among bidders. A strict bid rotation defies the law of chance and suggests collusion.
9. A bidder is bidding substantially higher on some sales for no logical reason.
10. Bid prices appear to increase whenever a new or infrequent bidder submits a bid.
11. Bid prices appear to be significantly different when only local purchasers compete and when purchasers outside the local area are competing.

67.17 - Direct Observations of Collusive Bidding

Forest officers opening bids shall make the following observations before, during, and after bid opening for possible instances of non-competitive bidding or possible collusive bidder behavior:

1. A successful bidder repeatedly subcontracts work to companies that submitted lower bids on the same sale.
2. There may be irregularities in the physical appearance of two or more bid forms, including same handwriting, identical stationary, or similar postmark.
3. Two or more competitors file a joint bid, even though at least one of the competitors could have bid individually.
4. A bidder appears in person to present the bid and also submits the bid of a competitor.
5. Competitors meet as a group with Forest Service personnel to discuss or review terms of bid proposals when there is not a clear reason for such a meeting.
6. Competitors submit identical bids or frequently submit revised bids at about the same time that appear similar.
7. Competitors regularly socialize, appear to hold meetings, or otherwise get together in the vicinity of the bid opening location, shortly before bid opening.
8. Competitors exchange any form of price information, such as volume calculations, among themselves.
9. A bidder withdraws its bid just before bid opening or does not participate in the oral auction after submitting a bid.
10. Bid bonds are in numerical order from the same bonding institution.
11. There is a significant increase in sales that are no-bid, and then bidders purchase these no-bid sales non-competitively prior to readvertisement.

67.18 - Annual Report

Send an annual report to the regional forester with monitoring results for each monitoring unit. Regional foresters may modify the format and information requirements. An annual report (FSH 1309.14, Report No. 2400-AC, Results of Bid Monitoring) from each region to the Washington Office, Forest Management staff, for prior fiscal year activities is required by December 1. No specific format is required, but the National report must include the following minimum information:

1. Summary of illegal activities concerning bid collusion and antitrust activities.

2. Resolution of any cases investigated by Department of Justice.
3. Administrative actions taken concerning any antitrust activities.
4. Summary of any bid protests.
5. Summary of any bidding irregularities such as non-responsive bidders, mistakes in bids, skewed bidding, bidders failing contracting officer's determination of bidder responsibility or certificate of competency issued by the Small Business Administration, and any other items relating to bidding irregularities.
6. Changes in bidding methods such as increasing sealed bidding or implementing proportionate rate bidding.
7. Summary of significant changes in trends such as an increase in no-bid sales, fewer bidders, volume under contract, overbid ratios, market share of purchasers, or significant changes in timber supply and demand.
8. Summary of relevant training for bid monitoring or antitrust activities.
9. Summary of creative deterrents, if any, that were used.

67.2 - Findings

Affirmative findings of these activities may warrant an investigation request to the Department of Justice (DOJ). Use the reporting process shown in exhibit 01 to communicate suspicious information derived from monitoring, from direct observations made during bidding, or from information received from a responsible third party. Two processes exist (informal and formal) that are used to refer instances of possible collusive bidding:

1. The informal process provides anyone with a reasonable suspicion of collusive bidding an opportunity to call a DOJ hotline number (1-888-736-4287 toll free, or 1-202-307-2040), or email DOJ at antitrust.complaints@usdoj.gov. Referrals through this informal process, in most instances, provide only minimal amounts of information, and, in many cases, do not lead to a follow-up investigation, opening a case file, or a response from DOJ. Informal referrals may be made to any of the DOJ field offices which can be found on the DOJ Web site at <http://www.justice.gov>. While DOJ field offices have the authority to conduct initial investigations, they do not have authority to officially open a case file. DOJ's Antitrust Division does not provide information to the Forest Service or OGC on informal referrals.
2. The Forest Service's preferred method of referral is the formal process. The formal process (exhibit 01) includes written documentation of observed behavior, conversations overheard, confessions, analysis of bid records, or other indications of collusive bidding. The formal process initiates a centralized decision-making scheme, whereby the Antitrust Division headquarters can coordinate action with the affected antitrust field office, OGC,

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Chapter 60 - Bid Opening – Gate 5

Amendment: 2409.18-2011-3

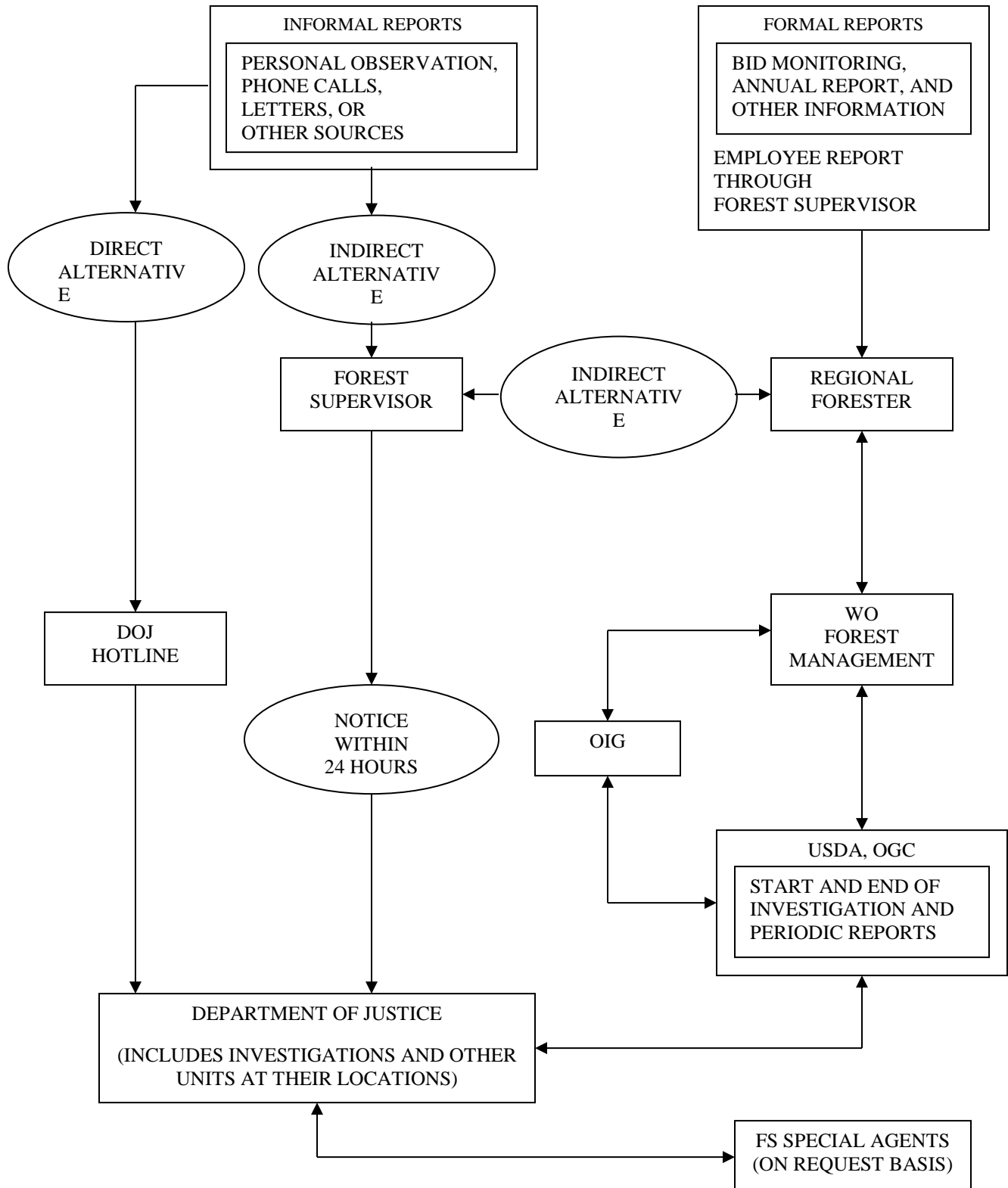
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and the Office of the Inspector General. Once the district ranger or forest supervisor determines that the collected information establishes a reasonable suspicion of collusive

bidding, send the documentation to the regional forester, who sends the referral to the Washington Office, Director of Forest Management. The Forest Management staff notifies the Natural Resources Division of OGC who makes a referral to the DOJ Antitrust Division headquarters and notifies OIG. DOJ makes a determination whether to begin an investigation or to prosecute. OIG would be responsible for conducting any investigation upon DOJ's request. Forest Service law enforcement officers also may be requested to assist in an investigation. OGC is responsible for keeping the Forest Service officers informed, as much as possible, concerning the status of a particular referral.

67.2 – Exhibit 01

Collusive Bidding Flow Chart



67.3 - Types of Actions to Report

If deviations in normal bid patterns on a monitoring unit occur, the forest supervisor shall determine if changes in the dependent industry, through mill closure or acquisition, support such a deviation. If a rationale for the deviation is not apparent, the forest supervisor shall report to the regional forester the change in bidding patterns (sec. 67.2).

Sale officers shall listen for casual comments and exchanges made by potential bidders before and during bidding that may indicate prior agreements or understandings among the participants. Also, watch for unusual behavior or positions that occur without any apparent reason, such as a prospective purchaser requesting advertisement of a deficit sale and then asking for its withdrawal during the advertising period. Be particularly alert for collusive behavior when two or more timber sales are being offered on the same day. Any reasonable belief of possible or suspected antitrust violation must be reported immediately to the line officer. The following directly observed situations warrant reporting:

1. Any purchaser conduct or statement suggesting collusive behavior.
2. Any threats or warnings to potential competitors intended to limit their bidding.
3. Any affidavits or allegations by credible purchasers or third parties about collusive bidding.
4. Any admissions of participation in collusive bidding.
5. Multiple bid submissions in the same handwriting or type, or multiple bids by a single bidder.
6. Bid bonds in numerical order from the same bonding institution.
7. Bid envelopes with the same postmarks or the same postage meter marks.
8. Any non-competing bidders who share, subcontract, or co-harvest timber sales.
9. Any bid pattern between purchasers who would ordinarily compete for sales, but do not.
10. Different bidders winning consecutive sale offerings and who make token or suppressed bids on other offerings.
11. Any deviation in normal bid patterns that cannot be explained.

67.4 - Notification Process

Use the formal referral process as the preferred method to notify DOJ (sec. 67.2). Using the informal referral process (sec. 67.2), the forest supervisor or regional forester must notify the DOJ within 24 hours of becoming aware of suspected collusive bidding practices. Provide the DOJ with the name and telephone number of the Forest Service contact. Notify Washington Office, Forest Management, through official channels.

Once a referral is made, do not initiate an investigation on your own. Once an occurrence is reported, the Forest Service takes no further action unless there is a request from DOJ or OGC. Maintain good records and confidentiality. Discuss the case only on a “need-to-know” basis. Do not reach a conclusion, attempt to verify, or openly discuss suspected wrongdoing.

67.5 - Action When Observation Shows Non-competitive or Irregular Bidding Patterns or Actions

Instances or patterns that appear irregular or non-competitive do not necessarily indicate collusive or other improper actions. Investigation by the Department of Justice (DOJ) is necessary to determine if a violation has occurred.

If notified through the normal chain of command, the Washington Office, Forest Management staff, shall provide courtesy copies of any correspondence to the OIG and the Office of the General Counsel (OGC). If direct notice is made by the phone, the OGC informs the Washington Office, Director of Forest Management, (sec. 67.2, ex. 01).

The OGC maintains a control record of DOJ investigations and formal bid monitoring referrals. Washington Office, Forest Management, shall maintain a record of all reported suspect violations. The DOJ notifies Washington Office, Forest Management, through OGC when an investigation is initiated and when it is terminated.

Forest and regional offices must maintain investigative referral files for each case reported. Limit access to any investigation details and the referral file to administrative, confidential use only by the parties involved with an investigation or parties having reporting responsibility. Handle information requests in accordance with FSM 6270.

67.6 - Administrative Action Available

Purchasers who are found to be guilty of collusive bidding and other related antitrust bidding practices must be referred, through channels, to the suspending and debarring official (FSM 2433). Sale officers should consider changing bidding practices, such as changing from oral auction to sealed bidding or to a combination of sealed and oral bidding (sec. 58.1 of this

handbook), to disrupt collusive practices or to encourage new competition in a bid monitoring unit. Distribution of timber sale offerings should occur evenly throughout the year in a random pattern. Avoid multiple bid openings on the same day and strive to offer 75 percent of volume by the end of the third quarter (FSM 2431.04).

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Chapter 60 - Bid Opening – Gate 5
Amendment: 2409.18-2011-3
Effective date: October 05, 2011

If a change in bidding methods or some other sale offering characteristic can help minimize opportunities for non-competitive behavior, submit a proposal and recommendation through official channels to the Chief. Include a brief statement outlining a proposed course of action.

The Office of the General Counsel coordinates with DOJ and Washington Office, Forest Management staff, to determine if recommended deterrents are reasonable and in accordance with legal and regulatory constraints on a case-by-case basis.

68 - Tracking and Reporting Gate 5

68.1 - Documentation

Completion of the requirements for this gate are represented by the date of bid opening, completion of the form FS-2400-15, Abstract of Bids, completion of the apparent high bidder letter, completion of the unsuccessful bidder letter, and completion of the Timber Information Manager (TIM) certification report “Bid Opening,” by the contracting officer. The appropriate line officer should review the certification report prior to approval by the contracting officer.

68.2 - Sale Tracking and Reporting

Use procedures in FSH 2409.14, Timber Management Information System Handbook. TIM will track and report accomplishment of requirements at Gate 5. Gate 5 is locked when the final certification report has been printed. The sale information stored in TIM is used at Gate 6.