

**Forest Service Handbook
Service Wide (WO)
Washington, DC**

Forest Service Handbook 2409.18 – Timber Sale Preparation Handbook

Chapter 70 – Sale Award (Gate 6)

Amendment Number: 2409.18-2024-6

Effective date: October 16, 2024

Duration: This amendment is effective until superseded or removed

Superseded Directive: 2409.18 Sale Award – Gate 6, 2409.18-2014-1.

Approved: Christopher French, Deputy Chief National Forest System.

Date approved: May 28, 2024

Responsible Staff: Forest Management, Rangelands Management, and Vegetation Ecology (FMRMVE)

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

Section 71.1: Renames caption to “Procedures When Sale is Not Awarded to Highest Bidder” and clarifies information on procedure.

Section 72.1: Added information clarifying that Contracting Officers shall check the System for Award Management before awarding a contract.

Section 72.11: Recodes and moves information previously at 72.12. Moves information relating to financial responsibility to 76.1. Adds further information on website locations for EEO compliance information and clarifies this process.

Section 72.12: Recodes and moves information previously at 72.13.

Section 72.13: Recodes and moves information previously at 72.14. Changes engineer’s estimated construction repayment rate to 70% of sale volume.

Section 72.14: Recodes and moves information previously at 72.15.

Section 72.15: Recodes and moves information previously at 72.16.

Section 72.16: Recodes and moves information previously at 72.17.

Section 72.16a: Recodes and moves information previously at 72.17a. Clarifies wording for award letter. Provides additional information of the content requirements for Letters of Credit.

Section 72.16b: Recodes and moves information previously at 72.17b. Adds optional wording to insert when contributed funds are included in sale advertisement. Removes procedure for the inclusion of erosion control wording in the award letter.

Section 72.17: Renames caption and provides direction when sales are awarded on lump sum contracts.

Section 72.17c: Removes code and information and incorporates into 72.16b.

Section 74: Adds direction on performance bond approvals when surety bonds are used.

Section 76.2: Clarifies procedures when purchaser is referred to SBA for issuance of a Certificate of Competency.

Section 76.31: Revises direction on increased Performance Bonding to state that an increased Performance Bond for marginally financial purchasers is not appropriate.

Section 76.32: Renames caption and provides information on purchaser responsibility. Clarifies that if a bidder fails to provide requested financial information they would be considered a non-responsible purchaser. Removes discussion on long term sales to FSH 2409.18, Chapter 50.

Section 77.11: Removes mandatory erosion control wording and incorporates it into 77.12.

Section 77.12: Adds direction for erosion control wording when purchaser has requested Forest Service to assume the work. Revises authorities for Harvest Inspector.

Section 77.2: Revises Exhibits 4 & 5 to reflect revised authorities for Harvest and Construction Inspectors.

Section 77.3: Retitles caption from “Bid Repudiation” to “Repudiation”.

Section 78.1: Provides additional direction on the handling of purchaser financial information collected for the Financial Ability Determination process.

Section 78.3: Retitles caption to “Tracking Contracts After Gate 6”.

Table of Contents

71 - Activities at Gate 6: Award A Timber Sale Contract	4
71.1 - Procedures When Sale is Not Awarded to Highest Bidder	4
72 - Making the Sale Award	4
72.1 - Special Requirements	5
72.11 - Equal Employment Opportunity Compliance	5
72.12 - Small Business Status.....	9
72.13 - Forest Service Road Construction.....	10
72.14 - Urgent Need of Harvest.....	13
72.15 - Stumpage Rates and Downpayment	13
72.16 - Sale Award Letter.....	13
72.16a - Mandatory Information in all Sale Award Letters	13
72.16b - Additional Paragraphs for Sale Award Letters	20
72.17 - Awarding Lump Sum Contracts	24
73 - Cash Deposit Requirements.....	24
74 - Performance Bond Requirements.....	25
75 - Withholding Award	25
76 - Determination of Purchaser Responsibility	26
76.1 - Financial Responsibility of Purchaser	29
76.11 - Requests for Data	29
76.12 - Complexity of Sales.....	29
76.13 - Affiliates	30
76.14 - General Considerations	30
76.2 - Financial Responsibility of Small Business Concerns.....	30
76.3 - Requirements for Showing Financial Ability as Qualification for Bidding or for Final Award	31
76.31 - Increased Performance Bond	31
76.32 - Negative Finding of Purchaser Responsibility	31
77 - Contract Execution.....	34
77.1 - Contract Execution Letters	34
77.11 - Mandatory Information in All Contract Execution Letters	34
77.12 - Optional Paragraphs for Contract Execution Letters.....	36
77.13 - Additional Discretionary Paragraphs for Contract Execution Letters	40
77.2 - Delegation of Forest Service Sale Administration Team Members.....	40
77.3 - Repudiation.....	49
78 - Tracking and Reporting Gate 6	49
78.1 - Documentation	49
78.2 - Sale Tracking and Reporting	50
78.3 - Tracking Contracts After Gate 6.....	50

71 - Activities at Gate 6: Award A Timber Sale Contract

These activities follow the determination of an apparent high bidder and include the determination of bidder qualification, equal employment opportunity clearance, specified road option investigation and feasibility, bidder responsibility determination, sale contract award, and entry of the sale award data into the Timber Information Manager (TIM).

71.1 - Procedures When Sale is Not Awarded to Highest Bidder

When the Contracting Officer is unable to make an affirmative determination of high bidder's responsibility for any of the reasons outlined in section 76, the contract shall not be awarded to the high bidder. When this occurs, or if the high bidder repudiates the contract, the sale may be (a) offered at the highest price bid to the next highest qualified bidders in order of their bids until award is accepted by one or refused by all qualified bidders, or (b) re-advertised (36 CFR 223.102).

To expedite this process, send a certified letter to all the unsuccessful bidders notifying them that the contract was not awarded to the apparent high bidder. State that the sale is being offered at the highest price bid to the next highest qualified bidder and other qualified bidders in order of their original bids until award is accepted by one or refused by all the qualified bidders. State that no other bid rates will be considered. State that to be considered they must complete and return the enclosed bid form with the bid guarantee if it was returned, by the date and time specified in the letter. Allow between 10 and 15 days unless circumstances warrant more or less time. Enter the high bid amount(s) in the bid forms sent to the unsuccessful bidders. Receive and open bids following the procedures in chapter 60 of this handbook and award the sale following the procedures in section 72. Please see TIM Contract User Guide for Instructions on tracking this process in TIM.

72 - Making the Sale Award

The Contracting Officer shall make the sale award when all the requirements relating to the award process have been met. The award date on the timber sale contract must be the date that the Contracting Officer signs the award letter (sec. 72.16). The date on the form SF-25, Performance Bond, must be the same as the date of the award letter and the award date of the contract. If the awardee does not execute the timber sale contract, furnish the required performance bond, or the down payment or fails to provide the required financial information retain the bid guarantee for application to damages due to the United States (sec.77.3).

72.1 - Special Requirements

Make the sale award promptly after determination of the highest bid, except where one or more of the following apply:

1. It is necessary to delay the award to allow time for the Contracting Officer to determine Purchaser's responsibility (sec. 76).
2. It is necessary to make an equal employment opportunity (EEO) pre-award compliance review.
3. It is necessary to defer the award of a small business set-aside sale.
4. The highest bidder has elected Government construction of specified roads (36 CFR 223.100).
5. A bid protest is filed with the General Accountability Office (sec. 66).
6. The timber sale decision is in litigation (FSM 2432.31b).
7. Upon checking the System for Award Management (SAM), the Contracting Officer determines that a participant in the primary covered transaction is debarred, suspended, ineligible, or voluntarily excluded (2 CFR 180.425). While the Sale Officer should check the System for Award Management during bid opening procedures, the Contracting Officer is responsible for verifying the status of the high bidder prior to awarding the contract. Follow the procedure set out in section 71.1 if the high bidder is found to be listed in SAM and is not eligible for award.

By submitting a bid, the bidder agrees not to withdraw the bid after the bid opening and to accept award under the terms of the sample contract and the bid form if its bid is accepted within 90 days after bid opening. Eligible bidders electing road construction by the Forest Service, agree that their offer shall remain open through the period stated in the prospectus although that period may exceed 90 days. If award will be delayed for any of the other reasons stated above, the Contracting Officer must obtain written approval from the bidder to extend its firm offer.

72.11 - Equal Employment Opportunity Compliance

1. **Sales Greater Than \$10,000 in Value.** Notify the apparent high bidder if the non-discrimination in employment standard provision B/B(T)8.63 of the Timber Sale Contract forms FS-2400-6/6(T), FS-2400-3(S)(T)(P) applies. These provisions apply to sales greater than \$10,000 in value, including required deposits. Document this notification as part of the sale award letter (sec. 72.16).

Furnish the apparent high bidder in all applicable sales with the small non-discrimination know Your Rights posters. These are available for downloading at <https://www1.eeoc.gov/employers/poster.cfm>. The Equal Employment Opportunity Commission, Joint Reporting Committee office will send the report forms to known purchasers. If a Purchaser is new or not getting the forms, inform the Purchaser that this information can be obtained from the Joint Reporting Committee. A list of current addresses and jurisdictions for EEOC offices is available at www.eeoc.gov, or by writing to;

U.S. Equal Employment Opportunity Commission
131 M Street, NE
Washington, DC 20507

For sales in which the total bid value plus required deposits exceed \$10 million, request an EEO compliance review from the Department of Labor, Office of Federal Contract Compliance Program (OFCCP) before making the sale award (41 CFR 60-1.20(d)). Refer to the Department of Labor website at: <https://www.dol.gov/ofccp/contractingofficers/> for a link to the Department of Labor pre-award process guide, also refer to 48 CFR 22.805(a).

Include the following in the request:

- a. The name and address of the highest bidder (and any known first-tier subcontractor if the subcontractor's bid would also exceed \$10 million).
- b. Proposed date of award.
- c. The dollar amount of the bid.
- d. The date the bid is to expire (use 90 days from the bid date).
- e. The date by which the Contracting Officer shall receive advice on compliance behavior in order to award a valid and binding contract (use same date as in paragraph d, above).

Refer to exhibit 01 for a sample EEO compliance letter.

Upon receipt of a pre-award clearance request OFCCP has 15 days to respond. If there is no response from OFCCP, clearance can be presumed and award can proceed. But, if OFCCP informs the agency of the intent to conduct a review it has an additional 20 days to conduct the review. OFCCP will provide the results from the pre-award evaluation but if no response is received within that 20-day period clearance can be presumed and the CO can proceed with award.

Do not make the sale award until it is cleared by the Department of Labor, Office of Federal Contract Compliance Program. If the OFCCP does not find the bidder to be in compliance, the bidder shall resolve the dispute with OFCCP. Do not award or reject bids on sales while disputes exist.

If OFCCP is unable to resolve a dispute with the bidder, it may direct the Forest Service to reject the bid. If the bid rejection occurs within 90 days of the bid date, follow the normal procedures for awarding to the next highest bidder. Beyond 90 days, reject all bids and re-advertise the sale. Rejection of a bid based on the OFCCP compliance check affects only the sale in question. The bidder may continue to bid on new sales.

2. **Salvage Sales Greater Than \$10 Million in Value.** Request EEO compliance review(s) prior to the bid opening if the Sale Officer expects bids over \$10 million and knows the likely bidders. Limit advance requests, and fully explain the reason for each advance request. The time required to grant clearance increases with the number of probable bidders; therefore, keep the number of likely bidders in each request as low as practical.

In cases where the highest bidder's willingness to comply with Executive Order 11246, as amended, is questionable, defer the sale award pending evidence of submission of form SF-100, Employer Information Report EEO-1.

72.11 - Exhibit 01

Sample of Equal Employment Opportunity Compliance Review Letter



United States
Department of
Agriculture

Forest
Service

Name of Forest
Service Unit

Address of Forest
Service Unit

File Code: 2450

Date:

Assistant Regional Administrator for OFCCP/ESA-O
Office of Federal Contract Compliance Program (OFCCP)
U.S. Department of Labor
Address Line 1
Address Line 2

Re: Equal Employment Opportunity Compliance Review

CERTIFIED, RETURN RECEIPT REQUESTED

Dear Sir/Madam:

On **(date)** the U.S. Forest Service held a bid opening for the (name of sale) Timber Sale. The apparent high bid, plus deposits, exceeded \$10,000,000. According to 41 CFR 60-1.20(d) an Equal Employment Opportunity pre-award compliance review must be done by your office prior to award of the sale.

The following information is included for your pre-award review:

1. Apparent high bidder: (name)
2. The bidder's firm offer will expire on: (date)
3. The purchaser's employment identification number: (Tax Identification Number [TIN])
4. (Name of sale) Timber Sale, (Add if the sale has a contract number: Contract # (number)), is located on the (name) Ranger District in (name) County, (State).
5. Total bid value of the sale: (Add as appropriate.) \$_____ for stumpage, \$ _____ for slash disposal, \$_____ for road maintenance, and \$_____ for road

72.11 - Exhibit 01—Continued

Sample of Equal Employment Opportunity Compliance Review Letter

reconstruction (note: that these deposits are DAR and DRES). (note: add as appropriate deposits for scaling services and use of cost share roads).

6. The (name of sale) Timber Sale is scheduled to terminate on (date).

(Add the following if bidder elected the road turn back option.)

7. The bidder has elected to have the Forest Service build the roads; therefore, until a road contract has been awarded, this sale does not have a contract number.

We would appreciate a determination prior to (date), when the bidder's firm offer will expire.

If there are any problems, please contact (name of Contracting Officer) at (telephone #).

Sincerely,

(NAME OF CONTRACTING OFFICER)
Contracting Officer

(Add as appropriate.)

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

72.12 - Small Business Status

Defer award of set-aside sales if the Contracting Officer doubts the small business status of the highest bidder. Request the Small Business Administration (SBA) to determine the proper classification of the highest bidder. Inform interested parties that protest the small business status of a highest bidder that they must file protests with the Contracting Officer within 5 working days of the bid opening to ensure consideration by SBA (48 CFR 19.302).

If someone challenges the small business status of any bidder participating in a set-aside sale auction and the Small Business Administration sustains the challenge before award, offer the sale to other qualified small business bidders at the highest qualifying small business bid (Comptroller General Decision B-191933). Follow the procedures described in section 71.1 in offering the sale to other qualified small business bidders. In situations where it becomes appropriate to reject all bids, follow the procedures in section 64.2 of this handbook.

72.13 - Forest Service Road Construction

1. When a qualified small business concern makes the highest bid and elects Forest Service road construction, or when roads are built to a higher standard than needed for timber harvest and a large business elects Forest Service road construction, and the advertisement provided for delay in award, do not make the award until receipt of a satisfactory construction bid. See section 65 of this handbook for information to include in a tentative award letter. Include the paragraphs concerning road construction, as appropriate.
 - a. If there are no acceptable bids within the maximum period stated in the advertisement, plus authorized adjustments, make the award to the highest bidder if that bidder agrees in writing to perform the road construction. Refer to exhibit 01 for a sample no road construction contractor letter.
 - b. If the highest bidder does not agree, offer the sale at the highest price bid to the next highest qualified bidder and to the other qualified bidders in order of their bids, from highest to lowest, received until one accepts (sec. 71.1). Acceptance is contingent upon the bidder agreeing to perform road construction.
 - c. If no bidder accepts the award, review the sale for costing problems.
 - d. If appropriate, update the appraisal before reoffering the sale. Otherwise, reoffer the sale promptly.
2. Upon receipt of a satisfactory construction bid, make the appropriate wording and contract provision changes. Base the repayment rate on the Engineer's estimate amortized on 70 percent of the sale volume. Make other appropriate changes to the contract and make the award.

72.13 - Exhibit 01

Sample of No Road Construction Contractor 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:

On (bid opening date), the Sale Officer declared you the apparent high bidder on the (name of sale) Timber Sale. On your sealed bid submission, you elected for the Forest Service to construct specified road(s).

(Add the next two paragraphs when the Forest Service does not receive a satisfactory road construction contract.) The Forest Service did not receive a satisfactory bid and did not award a road construction contract. As noted on the bid form, when the Forest Service does not award a contract for road construction, we provide the high bidder with an opportunity to construct the road(s).

You must inform us, in writing, within 30 days of receipt of this letter, if you wish to construct the road(s). If you wish to construct the road(s), we will award you the sale. Otherwise, the sale will not be awarded to you and we will begin procedures to return your bid guarantee.

(Add the next two paragraphs when the Forest Service determines that it will not complete solicitation of bids and award of construction or will not award the contract within the number of days stated in the advertisement.) The Forest Service has encountered an unanticipated delay in completing solicitation of construction bids for the road construction contract. Therefore, the Forest Service will not receive the road construction bids within the maximum period stated in the advertisement.

72.13 - Exhibit 01—Continued

Sample of No Road Construction Contractor Letter

In accordance with the terms and conditions of the “Road Completion Date” instructions attached to your bid, you have 30 days from receipt of this letter to inform us, in writing, of whether you wish to perform the road construction or to withdraw your bid without penalty. If we have not heard from you within the 30-day period, we will extend the maximum award delay time by the amount of time needed to complete the road construction bid solicitation and award the construction contract. If you wish to withdraw your bid, we will not award the sale and will begin procedures to return your bid guarantee to you.

(Contracting Officer to add any specific requirements here:)

We appreciate your bid for this National Forest timber. Do not hesitate to call us if we can be of assistance.

Sincerely,

NAME OF CONTRACTING OFFICER
Contracting Officer

(Add as appropriate.)

cc: (Name of Ranger District) RD
(Name of Forest Service Representative), FSR
(Other)

72.14 - Urgent Need of Harvest

When the prospectus of a sale in urgent need of harvesting provides for contract term adjustment of qualifying sales, the Contracting Officer shall agree upon these provisions with the apparent high bidder as soon after bidding as possible. Include the paragraph in the sample award letter informing the bidder that a request must be made within 30 days (sec. 72.16).

72.15 - Stumpage Rates and Downpayment

Determine contract stumpage rates, for sales advertised with total sale value or weighted-average bidding, and downpayment requirements following the procedures in the prospectus (chapter 50 of this handbook) prior to making the award.

72.16 - Sale Award Letter

When all of the requirements for timber sale award have been met, make the award by letter. Send the award letter by certified mail, return receipt requested, to the highest bidder. Include the mandatory provisions in section 72.16a and the applicable provisions in section 72.16b.

72.16a - Mandatory Information in all Sale Award Letters

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

1. Mail Delivery Notation. Insert the following notation at the top of the letter below the inside address and before the subject line: **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 Paragraphs. Include the following introductory paragraphs, completing the information identified by parentheses:
 - a. Awarding the Sale.
 - (1) Declaring the High Bidder.

On (date), you were declared the apparent high bidder on the (name of sale) Timber Sale, Contract Number (#). Sealed bids (followed by oral auction) for the (name of sale, contract number) were opened (date).
 - (2) Optional Additional Sentence when a Financial Review was Completed Per the Tentative Sale Award letter.

We have reviewed the data and financial information you submitted per Forest Service request on (date) and have determined that you are responsible pursuant to 36 CFR 223.101, Determination of Purchaser Responsibility.

- (3) Optional Additional Sentence when a Certificate of Competency Was Issued.

We have received a Certificate of Competency from the Small Business Administration recommending award of the contract to you.

- (4) Optional Additional Sentence when the Total Sale Value Exceeds \$10,000,000.

We have received a favorable determination from the Department of Labor on the required Equal Employment Opportunity (EEO) Compliance Review.

- (5) Optional Additional Sentence when Purchaser Elects Forest Service Road Construction.

As indicated on your bid form, you elected to have the Forest Service construct the specified roads, and we have received an acceptable bid for construction of the roads.

- (6) Optional Additional Sentence for Sales in Litigation when the Purchaser has requested the Sale be Awarded Prior to Resolution of the Litigation and has Returned a signed Pre-Award Waiver, Release, and Limitation of Liability Agreement (sec. 65.15 of this handbook).

The (name of sale) timber sale is the subject of environmental litigation. You requested to have the contract awarded prior to the environmental litigation being resolved and have returned a signed Pre-Award Waiver, Release and Limitation of Liability Agreement. The Forest Service has determined that awarding the sale under these circumstances is appropriate. Following sale award, you may be required to delay the start of some or all operations pursuant to B/BT8.33 of the contract and the terms of the Pre-Award Waiver, Release and Limitation of Liability Agreement.

- (7) Sale Award.

Your bid has been accepted and you are hereby awarded the timber sale contract.

b. Downpayment Requirements.

A Bill for Collection in the amount of \$_____ for the downpayment balance due is enclosed. Payment must be in the form of cash. Cash deposited must be in form of a bank draft, certified check, official bank or cashier's check, bank or postal money order, or company check. Payment must be made by the date the contract is required to be executed and returned to the Forest Service. Please note that the payment must be sent to the address shown on the Bill for Collection. A bank receipt for a wire transfer of the payment will be accepted as proof of payment. The receipt must be furnished by the date the contract is required to be executed and returned.

- (1) Additional Sentence if Cash Bid Guarantee Is Not Applied to Downpayment.

After receipt of this deposit, and upon execution of the contract with the required performance bond, your (cash bid guarantee, bid bond, letter of credit) will be returned to you.

- (2) Additional Sentence if Purchaser Requests Cash Bid Guarantee to Be Applied to Downpayment.

To comply with your written request, your cash bid deposit of \$_____ has been applied toward the amount of the downpayment.

c. Performance Bond Requirements. Include paragraphs (1), (2), or (3) as appropriate.

- (1) Purchaser has stated intent to satisfy the Performance Bond Requirement with Cash.

A performance bond in the amount of \$_____ is required. Since you stated your intent to satisfy the performance bond requirement with cash, a Bill for Collection for that amount is enclosed. Cash deposited must be in form of bank draft, certified check, official bank or cashier's check, bank or postal money order, or company check. Since you are depositing cash as a performance guarantee, a bond instrument is not necessary.

- (2) Performance Bond Will Be Other Than Cash.

A performance bond in the amount of \$_____ is required. Your bond may be secured with corporate surety, deposited securities, irrevocable letter of credit, or assignment of savings account. Please complete and return the enclosed SF-25 Performance Bond form.

- (a) Requirements for Corporations. Many corporations no longer use traditional embossed seals or stamps to affix a corporate seal. A seal could take other forms, such as the word “seal” placed between brackets after a signature, or the letters “L.S.” (short for locus sigilli, meaning in “the place of the seal”) adjacent to the contracting parties’ signatures. In such cases, ensure the agent signing the form has the authority to bind the corporation.

In addition, please impress the seal of your corporation.

- (b) Additional Sentences if a Letter of Credit Is Used (FSH 6509.11k, sec. 82.33).

The SF-25 form pledges your letter of credit as security. There are specific requirements for the content of a letter of credit if it is used to secure a performance bond on a timber sale contract as follows:

- (i) **Letter of credit number (assigned by the issuer).**
- (ii) **A statement that the letter of credit is irrevocable.**
- (iii) **Name and address of issuing institution, unless included in the letterhead.**
- (iv) **The legal name of the principal which must be identical to the name on the contract.**
- (v) **The maximum credit limit, which must equal or exceed the penal sum of the bond.**
- (vi) **A statement that the letter of credit secures the performance on (contract name and number).**
- (vii) **An authorization to draw sight drafts on the issuing institution in favor of the USDA Forest Service. (The institution issuing the letter of credit should provide an example of an acceptable sight draft.) If it is possible to receive monies through wire transfer in lieu of a physical demand, this must be stated in the letter of credit.**
- (viii) **Location(s) where the Forest Service may present sight drafts and a statement that the letter of credit number appearing on the sight draft is sufficient identification to honor the letter of credit.**

- (ix) **An unqualified expiration date for presentation of sight drafts for payment that is equal to the term of the bonded activity plus at least 1 year after the contract expiration date.**
- (x) **A corporate seal.**
- (xi) **The following statement: “The deposits of (Name of financial institution) are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or National Credit Union Association.”**
- (xii) **Signature line for person authorized to sign on behalf of the issuing institution and that person’s title.**

Contact this office for questions about the minimum requirements for a letter of credit or for an example of a letter of credit meeting the criteria above.

In some cases, the financial institute will reference that the ILOC is subject to the requirements of the Uniform Commercial Code (UCC) or Uniform Customs and Practice for Documentary Credits (2007 Revision) (UCP) as subject to State law (12 CFR 7.1016). This is standard wording on some Letters of Credit and is an acceptable addition; however, if there are questions or clarification needed, refer these to the Regional Contract Specialist for clarification.

- (c) **Additional Sentences if a Surety Bond is Used.**

A power of attorney for the person signing the SF-25 Performance Bond form for the surety company must be attached to the form. A surety for performance bond must cover a period of at least 6 months beyond the timber sale termination date. An additional copy of the contract is enclosed for the surety company.

- (3) **Additional Sentence if Purchaser has a Blanket Payment Bond.**

Also, enclosed are three copies of the Application for Addition to Blanket Payment Bond to be signed by you and returned to us for approval, if you want this sale covered by your present bond.

d. Requirements for Returning and Executing the Contract.

- (1) **Enclosed Documents and Signature Procedures.**

Enclosed is a complete timber sale contract, plus (number) additional copies of page 1 of the contract for your signature. Execute and return all copies of the contract and all copies of page 1, make the required deposits, and furnish a SF-25 Performance Bond form with (your letter of credit, a power of attorney, an assignment agreement) attached by (date).

- (a) Additional Sentence for Businesses that are Corporations.

Your corporation secretary must certify the signature and affix your corporate seal.

- (b) Additional Sentence for Businesses that are Other Than Corporations.

The signatures and addresses of two witnesses are required. The witnesses should write their names and addresses where required.

- (2) Time Requirements.

No additional time can be granted for returning the executed contracts or making the required deposits, except that pursuant to the bid form the downpayment may be received up to 3 days from the required date of contract execution subject to interest on the late payment. Upon your written request additional time may be granted to furnish a satisfactory performance bond. If time requirements for returning the executed contract, making the downpayment (and other required deposits), and furnishing a satisfactory performance bond are not met, it will be considered a repudiation of the contract. In such event, the bid guarantee will be retained and applied towards any damages due in accordance with the contract provisions.

- (3) Documents to be Returned to Purchaser.

After our execution of the contract and upon our receipt of the downpayment and any other required deposits and approval of the performance bond, an original and (number) copies of the contract and original bond form(s) will be mailed to you.

- (a) Additional Sentence if the Contract Includes Specified Roads.

In addition, (number) copies of the road plans will be mailed to you.

- (b) Additional Sentence if the Purchaser Uses a Surety for Performance Bond and Forest Service Will Send Surety Contract.

We will send a copy of the contract and bond form(s) to your surety.

- (c) Additional Sentence if the Purchaser Uses a Surety for Performance Bond and Purchaser will Send Surety Contract.

We have enclosed a copy of the contract and bond form(s) for you to provide to your surety.

- e. Alternatives for Making Payments.

Your payments should be made according to the information reflected on the Bill for Collection. If you choose to mail your payment; postal, express, or courier mail received by 9:00 a.m. Pacific Time is processed same day. Payments that arrive after 9:00 a.m. are not guaranteed same day processing. If you choose to use courier or express mail delivery, please contact this office for specific addressing instructions.

You also have the options of paying your bill online at <http://www.fs.fed.us/billpay/> or having your bank electronically transfer your payment directly to the Treasury to the Forest Service account listed on the Bill for Collection via FEDWIRE. If you choose any one of these options, please contact this office for specific instructions.

- f. Requirements for Certifying Subcontractors.

You must require your subcontractors to include a certification for the subcontractor and its principals in any proposal submitted in connection with the subcontract proposal. The certification form was attached to the bid form. You may contact me for additional copies. You must keep the certifications on file until the termination date of the contract.

- g. Requirements for Identifying Sale Representative.

Please furnish us with a letter stating the name of your representative on the sale area who is authorized to receive, and act upon, notices and instructions from the Forest Service.

- h. Requirement for Operating Schedule.

Prior to the start of road construction or logging activity, a written operating schedule or annual schedule of planned activities must be filed with the (Contracting Officer or Forest Service Representative) and annually thereafter.

- (1) Additional Sentence if Blank FS-2400-0078 Annual Operating Schedule Forms Are Enclosed.

Blank forms are enclosed for your optional use.

- i. Requirement for Plan of Operations.

- (1) Additional Sentence for Timber Sale Contracts 2 Years or More in Length.

The contract requires that within 60 days of receipt of this letter, a General Plan of Operation is to be submitted. You must have written approval of the plan before operations may commence.

- (2) Additional Sentence if Blank FS-2400-0077 Plan of Operations Forms are Enclosed.

Blank forms are enclosed for your optional use.

5. Closing Paragraph. Include the following closing paragraph:

Please call us at (telephone number) if we can be of assistance.

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 Timber Sale Contract, Bill for Collection, SF-25 Performance Bond form, Application for Addition to Blanket Payment Bond, Know your Rights is the Law posters, SBA Form 723, General Plan of Operation form FS-2400-0077, or Annual Operating Schedule form FS-2400-0078 that are being sent with this letter.
8. Copies. List under cc and send copies to the District Ranger and any other appropriate officials.

72.16b - Additional Paragraphs for Sale Award Letters

Include the following paragraphs in sale award letters when applicable.

1. Include This Paragraph if Total Sale Value or Weighted-Average Bidding Was Used. If the following paragraph is used, complete the information in the table:

The bid premium has been distributed among all advertised species or species groups with estimated volumes that are not fixed rate and included on the bid form. The bid rates are:

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

2. Include these Paragraphs if there are Estimated Amounts of Certain Species or Products that the Purchaser Must Remove. If the following paragraphs are used, complete the information identified by parentheses:

In addition, there is within the sale area an estimated volume of (species or product) that is to be paid for at \$(fixed rate) per (unit of measure) for timber.

- a. Deposits are Lump Sum Amounts.

Additional lump sum deposits required for slash disposal total \$_____ and for road maintenance total \$_____.

- b. Deposits are Based on Unit of Measure.

Additional deposits required for slash disposal are \$_____ per (unit of measure) and \$_____ per (unit of measure) for road maintenance.

3. Include these Paragraphs if there is Timber Subject to Agreement. If the following paragraphs are used, complete the information identified by parentheses:

In addition, there is within the sale area an unestimated (volume) (unit of measure) of (species or product) that will become included timber upon your written agreement with the Contracting Officer at \$(fixed rate) per (unit of measure) for timber.

- a. Deposits are Lump Sum Amounts.

Additional lump sum deposits required for slash disposal total \$_____ and for road maintenance total \$_____.

- b. Deposits are Based on Unit of Measure.

Additional deposits required for slash disposal are \$_____ per (unit of measure) and \$_____ per (unit of measure) for road maintenance.

4. Paragraphs Concerning Equal Employment Opportunity. The following paragraphs are required for the conditions described:

- a. Contract is for \$10,000 or More, Including Required Deposits.

The contract will require your compliance with the terms of Executive Order 11246, as amended, and the regulations at 41 CFR 60 -50.5, which prohibit job discrimination on the basis of race, color, religion, sex, age, or national origin.

Two “Know Your Rights” posters are enclosed and are to be displayed in conspicuous places, available to all employees and applicants for employment. Additional posters may be obtained from this office or may be obtained online at <https://www1.eeoc.gov/employers/poster.cfm>

- b. Contract is for \$50,000 or More, Including Required Deposits, or if the Purchaser May have 100 or More Employees.

You may be required to file form SF-100, Employer Information Report EEO-1 annually in order to comply with the regulations at 29 CFR 1602.7 and with the contract provision(s). All employers with 100 or more employees and all Government contractors with 50 or more employees and a Government contract of \$50,000 or more are required to file report EEO-1. Instructions on who must file, how to file, when to file, and where to file are on the Equal Employment Opportunity Commission website at www.eeoc.gov. Persons without internet access may address questions and request forms from:

**U.S. Equal Employment Opportunity Commission
131 M Street, NE
Washington, DC 20507
Phone 1-866-286-6440**

Your subcontractors may also be required to file form SF-100, Employer Information Report EEO-1, if the subcontractor employs 100 or more employees or the subcontract is for \$50,000 or more and the subcontractor employs 50 or more persons.

Two “Equal Employment Opportunity is the Law” posters are enclosed and are to be displayed in conspicuous places, available to all employees and applicants for employment. Additional posters may be obtained from this office.

5. Required Paragraph for SBA Set-Aside Sales. If the following paragraph is used, complete the information identified by parentheses:

This timber sale was set-aside for preferential award to small business, and the contract requires that 70 (substitute 50 for 70 in Region 10) percent of the sawtimber be processed by a small business. SBA Form 723 is enclosed for your completion. Return the completed form within 30 days after receipt of this award letter. Your failure to return the completed form by the required date will be considered a breach of the contract.

6. Required Paragraph for Sales West of the 100th Meridian, Except Alaska.

This contract is subject to the Forest Resources Conservation and Shortage Relief Act of 1997, as amended (16 U.S.C. 620, et seq.). You may be required to provide annual Certifications of Receipt and Disposition of Timber Originating from National Forest System Land. Additional instructions will be sent to you if these reporting requirements become mandatory. The requirements for branding and painting are listed in the contract.

7. Include this Paragraph when the Prospectus Offered Consideration of a Contract Term Adjustment on Other Forest Service Sales to the Purchaser of this Sale.

As stated in the prospectus for this sale, the Forest Service will consider a contract term adjustment on certain other Forest Service sales to allow time for logging the timber in this sale designated as “in urgent need of harvesting.” To qualify for this adjustment, you shall submit your request within 30 days of receipt of this letter. The request should list which sales you want adjusted; the number of days requested, by sale; and how logging this sale would impact existing sales.

8. Required Paragraph if Purchaser is a Corporation.

This award is subject to the provisions contained in the Consolidated Appropriations Act, 2012 Pub. L. No 112-74, Division E, Sections 433 and 434 regarding corporate felony convictions and corporate Federal tax delinquencies. Complete and return the enclosed form AD-3031 with the signed copies of the contract. This form is also available electronically at: <http://www.ocio.usda.gov/policy-directives-records-forms/forms-management/approved-computer-generated-forms>

9. Include this Paragraph if Sale was Advertised with Contributed Funds to Partially Offset a Deficit Sale and the Bidder did not elect to have Forest Service Perform Road Construction (sec.53.81).

This sale was advertised with contributed funds to partially offset the difference between appraised value and advertised value. In accordance with instructions in the prospectus the total contribution is decreased by an amount equal to the bid

premium. The maximum value of cash and/or materials that the Forest Service will provide to offset the deficit is \$_____.

10. Include this Paragraph if Sale was Advertised with Contributed Funds to Partially Offset a Deficit Sale and the Bidder Elected to have the Forest Service Build the Roads (sec.53.81).

This sale was advertised with contributed funds to partially offset the difference between appraised value and advertised value. In accordance with instructions in the prospectus, since you elected to have the Forest Service build the roads the Forest Service will not offset the deficit with contributed funds.

11. Additional Discretionary Paragraphs of Sale Award Letter.

The Contracting Officer may add additional special instructions or any specific sale award requirements for the highest bidder to a sale award letter.

72.17 - Awarding Lump Sum Contracts

Contract form FS-2400-2 for the sale of decked timber and form FS-2400-4 Forest Products Contract and Cash Receipt for small non- complex sales are both lump sum contracts which require payment in full for stumpage, associated charges, and Performance Bond, if required, at time of award. These contracts may either be advertised for bid or awarded directly. For a lump sum direct sale, the Contracting Officer has discretion to prepare a formal award letter. For advertised sales a formal award letter should be prepared.

Affirmation of a Purchaser responsibility determination is met by award of a lump sum contract. A contract execution letter may be prepared once payments clear lockbox and when delegations of authority need to be sent to the Purchaser along with any other discretionary paragraphs needed (77.1).

73 - Cash Deposit Requirements

1. Require the bidder to make a downpayment, as required by 36 CFR 223.49. Calculate the downpayment for the sale by the method shown in the bid form. The Contracting Officer shall notify the highest bidder of the amount of the required downpayment. The downpayment amount is the sum of 10 percent of the total advertised value plus 20 percent of the total bid premium unless otherwise noted on the bid form. Round the downpayment amount up to the next \$100. The indicated downpayment amount shall be increased to 20 percent of the total advertised value and 40 percent of the total bid premium if the Contracting Officer determines that the bidder meets the criteria for additional downpayment established by 36 CFR 223.49. The downpayment is due

within 3 days of the required date of contract execution specified in the sale award letter.

2. Except for the 3 days provided on the bid form, provide no extension of time for making the downpayment. The highest bidder shall make the downpayment to the Forest Service, at the address noted on the Bill for Collection or as otherwise indicated in the award letter.
3. Failure by the highest bidder to make the required downpayment within 3 days of the required date for executing the contract constitutes repudiation of the contract and the defaulting bidder will be subject to damages, as specified in the Instructions to Bidders included with the bid forms. The Government must retain the bid guarantee pending a determination of damages (FSH 2409.18, sec. 53.17).
4. If the high bidder repudiates the contract, offer the sale to the other qualified bidders at the highest price bid (sec. 71.1). Unless the Contracting Officer extends the time for furnishing the performance bond, take the above action when the bidder makes the downpayment, but fails to furnish an acceptable performance bond or to sign and return the contract within the number of days (usually 30) stated on the bid form and in the award letter (sec. 72.16).

74 - Performance Bond Requirements

See FSH 6509.11k and FSM 2456 for direction on performance bond requirements. The performance bond amount and methods for determining the amount required shall be noted in the prospectus for the sale (36 CFR 223.83 and sec. 53.7). Cash or Deposited securities may be used for a performance bond in addition to a surety bond. If a surety bond is used it must be from a surety company that is on the Treasury Department's list of companies qualified to write surety bonds for the United States Government. This list is maintained in the Department Circular 570 at <https://fiscal.treasury.gov/surety-bonds/circular-570.html>.

Refer to the Forest Products Financial System (FPFS) Sharepoint site for wording to be added to the Forest Service bond forms if required. The Contracting Officer should work closely with their Forest Products Resource Specialist in preparation of award documents to ensure financial forms contain the required information.

75 - Withholding Award

Contracting Officers shall obtain approval from Washington Office, Director of Forest Management, prior to awarding a sale that is the subject of litigation (FSM 2432.31a).

Consult 36 CFR 223.100 for circumstances for withholding an award to the highest bidder. Refer proposals for withholding promptly to the Regional Forester, who shall obtain advice

from the Regional Office of the General Counsel. Before taking final action to withhold an award pursuant to 36 CFR 223.100 (c) or (d), refer proposals to Washington Office, Forest Management staff, for review and advice.

76 - Determination of Purchaser Responsibility

Title 36, Code of Federal Regulations, section 223.101 requires the Contracting Officer to make an affirmative determination of the Purchaser's responsibility to carry out a timber sale contract prior to making an award in order to protect the public interest. To make such an affirmation the

Contracting Officer must consider the following:

1. The Purchaser has adequate financial resources to perform the contract or has the ability to obtain them (sec. 76.1).
2. The Purchaser has the ability to perform the contract taking into consideration all commercial and Government business commitments.
3. The Purchaser has a satisfactory record of performance on Federal timber sale contracts with the Forest Service, Bureau of Land Management, or Bureau of Indian Affairs. Assume that a prospective Purchaser who has been seriously deficient in contract performance is not responsible unless the Contracting Officer determines the lack of performance by the Purchaser or affiliate was due to circumstances beyond the Purchaser's control. Defaulted sales constitute lack of performance requiring a close examination. In making a determination, the Contracting Officer shall consider the number of contracts, the extent of deficiency in each, and corrective action by the Purchaser or affiliate.
4. The Purchaser has a satisfactory record of integrity and business ethics.
5. The Purchaser has, or is able to obtain, equipment and supplies suitable for the logging and resource protection required by the contract.
6. The Purchaser is otherwise qualified under applicable laws and regulations.

The requirements listed in this section provide reasonable assurance that a Purchaser can log the amount of timber in the proposed contract within the allotted time. Examine all aspects of past operations for evidence of responsibility. Give serious consideration to withholding an award in cases where the Forest Service has a well-documented record showing that the highest bidder has habitually failed to comply with material provisions of contracts, has refused to honor appropriately issued suspension notices, or has other indicators of serious poor performance. For example, a pattern of repudiations of bids may indicate a weakness in

business ethics. Before taking final action to withhold an award under the preceding paragraphs 3 or 4, pursuant to paragraphs (b)(3) or (4) of 36 CFR 223.101, refer proposals to the Washington Office, Forest Management staff for review and advice.

Before making the award, the Contracting Officer shall make a written determination of the Purchaser's responsibility and include it as part of the sale contract award record.

Refer to exhibit 01 for a sample Purchaser responsibility letter.

76 - Exhibit 01

Sample of Purchaser Responsibility Letter



United States
Department of
Agriculture

Forest
Service

Name of Forest
Service Unit

Address of Forest
Service Unit

File Code: 2450
Route To:

Date:

Subject: Purchaser Responsibility

To: Contract Files

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

I have made an affirmative determination of the purchaser's responsibility pursuant to 36 CFR 223.101.

(Add if a financial review was conducted: Based on the financial review of the purchaser's submission of (date),) or (Add if the SBA issued a COC): Based on the Certificate of Competency provided by the Small Business Administration, I have determined that (name of purchaser) has adequate financial resources to complete the (name of sale) Timber Sale, Contract Number (#).

(Add if a financial review was not conducted): Based on the history of satisfactory performance on previous timber sale contracts of similar or greater value, I have determined that (name of purchaser) has adequate financial resources to complete the (name of sale) Timber Sale, contract number (#).

In addition, I have determined that the purchaser: 1) will be able to complete this sale within the contract term, 2) has a satisfactory performance record on previous timber sale contracts, 3) has a satisfactory record of integrity and business ethics, 4) 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 5) is otherwise qualified and eligible to receive an award under applicable laws and regulations.

(Contracting Officer may add other findings here.)

NAME OF CONTRACTING OFFICER
Contracting Officer

76.1 - Financial Responsibility of Purchaser

The Contracting Officer shall make inquiries sufficient to determine the Purchaser's financial ability to perform the contract, as authorized by 36 CFR 223.101 prior to making award. Limit such inquiries for Purchasers with established records of satisfactory performance. Include the Contracting Officer's determination as a part of the sale record (sec. 72.16a).

Contracting Officers shall seek assistance from the Albuquerque Service Center, (ASC) Budget and Finance (B&F), Audit and Assurance staff, Resource Audit Branch (RAB), when conducting a financial responsibility determination. The ASC will assign a qualified Accountant to perform an analysis of the information provided by the Purchaser (sec. 65.12). The Contracting Officer shall monitor the financial review process to ensure it is completed prior to the end of the 90-day period for bidder's firm offer. Once RAB receives all of the requested documents and assigns an auditor they will have 30 days to complete the Financial Ability Determination. Refer to section 65.12 of this handbook for documents RAB requests and further direction on this procedure.

An additional 15 working days must be built into this timeline for small businesses to accommodate a referral to SBA for a certificate of competency (COC) in event the Forest Service review does not find the bidder financially capable of completing the sale (sec. 76.2). An additional 10 to 15 days should be built into the timeline for offering the sale to the other qualified bidders (sec. 71.1) in event the high bidder is not found responsible, and SBA does not issue a COC.

Unless authorized by the Chief (sec. 76.32), do not require submission of evidence of financial ability as a prerequisite to bidding.

76.11 - Requests for Data

Make all requests for financial ability data in writing (sec. 65.12).

76.12 - Complexity of Sales

Place more emphasis on financial ability determinations for large or complex sales than for small ones, because large sales may require expenditure of capital for such things as roads, camps, heavy equipment, and relatively large inventories. However, a Purchaser may have a number of small timber sales under contract that in the aggregate require significant financial resources. In such cases, consider the need for a statement of financial ability before making award of each additional sale.

76.13 - Affiliates

Affiliated concerns (36 CFR 223.89) are normally considered separate entities in determining whether the concern that is to perform the contract meets applicable standards of responsibility. However, the Contracting Officer should consider an affiliate's past performance and integrity when that affiliate may adversely affect the prospective Purchaser's responsibility.

76.14 - General Considerations

Do not use the financial ability requirements to prevent legitimate promotion of enterprises based on the use of National Forest timber, or to prevent the financing of operations on National Forests by borrowed capital to a degree consistent with conservative business standards.

Contracting officers should consult with contracting officers on adjacent units to assess past and current performance on sales the Purchaser has on those other units.

Consider a COC from the Small Business Administration as conclusive evidence of the financial ability of a small business concern on all other sales, not just sales set-aside for preferential award to small businesses (Small Business Act of 1958).

76.2 - Financial Responsibility of Small Business Concerns

Do not disqualify a small business concern, as defined by the SBA (FSM 2439) on the grounds of lack of any element of responsibility, including, but not limited to, competency, capability, capacity, credit, integrity, perseverance, and tenacity. Refer the matter to the SBA Government Contracting Area Office serving the area in which the headquarters of the offeror is located to evaluate the Purchaser for a COC. This applies to sales set-aside for preferential award, as well as regular sales. This procedure should also be used before awarding a road contract to determine the competency of unknown small business purchasers who elect to have the Forest Service construct specified roads.

When referring a small business concern for a COC, furnish the Area Office of SBA with all pertinent available information concerning the company and the sale in question, including the prices offered by the three highest bidders. Refer to 13 CFR 125.5(c)(1) for a list of documents that will be needed by SBA in order to make a determination. The Contracting Officer must provide SBA with a written determination of non-responsibility and indicate that the bid was found to be responsive when submitting documents.

SBA will contact the small business concern and inform them of the Contracting Officer's negative responsibility determination and offer them the opportunity to apply to SBA for a COC by a specified date. Unless a longer timeframe is agreed to with SBA, defer making formal award of the sale for up to 15 working days, to permit SBA to make a decision. The SBA does

not process COCs prior to bidding. Upon receipt of a COC from the SBA, the Contracting Officer shall award the sale. If the SBA does not issue a COC, do not award the sale to that bidder. Follow the procedures in section 71.1 for offering the sale to other responsive bidders.

76.3 - Requirements for Showing Financial Ability as Qualification for Bidding or for Final Award

76.31 - Increased Performance Bond

It is not appropriate to increase the Performance Bond for issues relating to individual financial responsibility. See FSH 2409.18, section 52.5.

76.32 - Negative Finding of Purchaser Responsibility

If the Contracting Officer makes a negative finding of Purchaser responsibility, do not make an award to the bidder (sec. 76). Failure of bidder to provide all of the financial information requested within the time specified (sec. 65.12), or any authorized extension of time, should result in a negative finding of Purchaser responsibility and may also be a violation of the False Statements Act. Refer to exhibit 01 for a sample non-responsible Purchaser letter. Follow the procedures in section 71.1 to offer the sale to the other qualified bidders at the highest price bid (36 CFR 223.102).

76.32 - Exhibit 01

Sample of Non-Responsible Purchaser 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:

Sealed bids (followed by oral auction) for the (name of the timber sale, contract number) were opened (date). You were declared the apparent high bidder for the timber sale.

On **(date)**, you were informed that award of the sale would be withheld pending the outcome of a review to affirm your abilities to perform the contract as prescribed in the Code of Federal Regulations (CFR), Title 36 Section 223.101 Determination of Purchaser Responsibility. This rule mandates that the Contracting Officer makes an affirmative determination 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.

Based on a review of the data and financial information you sent to me on (date), I was unable to make an affirmative determination of your responsibility pursuant to 36 CFR 223.101. Therefore, I have decided not to award the (name of sale) Timber Sale to you.

76.32 - Exhibit 01—Continued

Sample of Non-Responsible Purchaser Letter

(Add the next 2 paragraphs for small business concerns.) However, since you are a small business concern, I have referred this matter to the Small Business Administration (SBA) to evaluate you for a Certificate of Competency (COC). They will be in contact with you to determine if you wish to apply for a COC. The SBA has 15 working days to process this request for a COC and return it to me. We will not process returning your bid guarantee to you until this 15 working day period has expired on (date). (Indicate later date if agreed to with SBA.) We will expedite return of your bid guarantee if the SBA issues a negative COC.

If the SBA's Certificate of Competency recommends award of the contract to you, I will proceed with award.

(Add if the bidder is not a small business.) We will begin procedures to return your bid guarantee to you.

(Contracting Officer to add any specific information here:)

If you have any questions concerning this matter, please contact me at this office or by telephone at (telephone #).

Sincerely,

NAME OF CONTRACTING OFFICER
Contracting Officer

(Add as appropriate.)

cc: District Ranger, (Name of Ranger District) RD
(Name of Forest Service Representative), FSR
(Other)

77 - Contract Execution

The Contracting Officer shall complete execution of the contract upon receipt of the signed contract, performance bond, downpayment, and any other requirements listed in the award letter. Once the contract has been awarded and the Purchaser has complied with all instructions in the award letter, the Contracting Officer should not delay executing the contract. An exception would be when a bid protest is received after the contract is awarded, but within 10 days of the bid opening (sec. 66 of this handbook). Execution of the contract includes signing of the contract by the Contracting Officer, sending the Purchaser approved copies of the contract and any other approved documents, and designating Forest Service representatives on the sale.

77.1 - Contract Execution Letters

Send the execution letter by certified mail, return receipt requested, to the Purchaser. Include mandatory provisions from section 77.11. Also include the provisions in sections 77.12 and 77.13 that apply to the circumstances of the Purchaser or pertain to the sale.

77.11 - Mandatory Information in All Contract Execution Letters

The following information must be included in all contract execution letters to the Purchaser:

1. Mail Delivery Notation. Insert the following notation at the top of the letter below the inside address and before the subject line:

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 Paragraphs. Include the following paragraphs, if appropriate, completing the information identified by parentheses:

- a. Required Enclosures.

Enclosed (is/are) your executed (copy/copies) of the contract for the above listed timber sale.

- b. Additional Sentence if Surety Is Used for Performance Bond.

We are also enclosing your approved copy of the performance bond form.

- c. Purchaser Representatives.

As requested in our award letter, we have received the name of your purchaser representative. Please provide the Forest Service Representative with written designations of your Field Supervisor or other purchaser’s representatives as appropriate.

- d. Forest Service Representative. Include the following sentence if someone other than the District Ranger will be designated as the Forest Service Representative (FSR).

The Forest Service Representative (FSR) for this sale is (name of FSR and contact information).

- (1) Include the following sentence when a delegation of authority table maintained by the Region is used:

The authorities delegated to the FSR are listed in the enclosed table.

- (2) Include the following information if a delegation of authority table maintained by the Region is not used:

The major duties and responsibilities of the FSR include:

- (a) Giving and receiving notices regarding performance of the contract.
 - (b) Accepting work, specified in the contract, as completed.
 - (c) Resolving differences concerning interpretation of the timber sale contract and referring unresolved conflicts to the Contracting Officer.
 - (d) Ensuring the contract requirements are met and issuing oral or written notices for suspension of operations or breach of contract.
 - (e) Making agreements within delegated authority.
 - (f) Referring claims and requests for contract modification, changes, and adjustments to the Contracting Officer for resolution.
 - (g) Coordinating with law enforcement personnel when unnecessary cutting or damage to undesignated timber occurs.
- (3) Additional Sentence for Tree Measurement Sales.
- (h) Releasing timber for cutting.

- (4) Additional Sentence if FSR will Designate the Sale Administrator, Harvest Inspector, or Others.

(i) Designating a Sale Administrator and others, as needed, to assist in the on-the-ground administration of this contract.

5. Closing Paragraph. Include the following paragraph:

Please call us at (telephone #) if we can be of assistance.

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 the executed contract, performance bond form, request for work form, or Delegation of Authority table, that are being sent with this letter.
8. Copies. List under cc and send copies to the District Ranger and any other appropriate officials.

77.12 - Optional Paragraphs for Contract Execution Letters

Refer to section 77.2 for additional direction on delegations for sale administration team members and letter formats.

1. Optional Paragraph if the Contracting Officer Designates All Sale Administration Team Members with a Delegation of Authority Table Maintained by Individual Regions.

A delegation of authority table listing Forest Service sale administration personnel and the specific contract authorities delegated to them is enclosed.

2. Optional Paragraph if the Contracting Officer Designates All Sale Administration Team Members without a Delegation of Authority Table.

Complete the information identified by parentheses:

- a. Designation of the Forest Service Representative.

The Forest Service Representative (FSR) for this sale is (name and contact information). The major duties and responsibilities include:

- (1) Giving and receiving notices regarding performance of the contract.**

- (2) Accepting work, specified in the contract, as completed.**
- (3) Resolving differences concerning interpretation of the timber sale contract and referring unresolved conflicts to the Contracting Officer.**
- (4) Ensuring the contract requirements are met and issuing oral or written notices for suspension of operations or breach of contract.**
- (5) Making agreements within delegated authority.**
- (6) Referring claims and requests for contract modification, changes, and adjustments to the Contracting Officer for resolution.**
- (7) Coordinating with law enforcement personnel when unnecessary cutting or damage to undesignated timber occurs.**

(Additional Sentence for Tree Measurement Sales.)

- (8) Releasing timber for cutting.**

(Additional Sentence if FSR Will Designate the Sale Administrator, Harvest Inspector, or Others.)

- (9) Designating a Sale Administrator and others, as needed, to assist in the on-the-ground administration of this contract.**

b. Designation of the Engineering Representative.

The Engineering Representative (ER) for this sale is (name and contact information). The major duties and responsibilities include:

- (1) Receiving notices regarding specified road construction.**
- (2) Taking action in relation to specified road construction.**
- (3) Securing compliance with specified road drawings and specifications.**
- (4) Determining whether materials furnished meet specifications.**
- (5) Making minor changes in drawings and specifications, which do not exceed specified tolerances, to meet on-the-ground conditions.**
- (6) Preparing revised drawings, specifications, and cost estimates, as necessary, and submitting to the Contracting Officer for approval.**

- (7) Preparing estimates of completed specified road construction work and submitting them to timber sale accounting.**
- (8) Recommending acceptance of completed work.**
- (9) Designating a Construction Inspector, as needed, to assist in administration of specified road construction.**

c. Designation of the Sale Administrator.

The Sale Administrator (SA) for this sale is (name and contact information). The major duties and responsibilities include:

- (1) Assisting the Forest Service Representative in on-the-ground administration of the contract, except for specified road construction, and inspecting operations to determine compliance with contract requirements.**
- (2) Being readily available at the area of operations.**
- (3) Acting as primary contact with the purchaser's representative for timber harvest activities.**
- (4) Approving locations of temporary roads, landings, skid trails, and other temporary facilities and making other on-the-ground approvals and agreements within delegated authority.**
- (5) Initiating billings for payments required by the contract or on request by the purchaser's representative.**
- (6) Referring differences in contract interpretation to the Forest Service Representative.**
- (7) Giving oral notice of breach of contract and suspending the purchaser's operations when breach constitutes immediate threat to human life, or a threat of immediate and irreparable resource damage.**
- (8) Reporting a breach of contract to the Forest Service Representative.**
- (9) Coordinating with law enforcement personnel when unnecessary cutting or damage to undesignated timber occurs.**

d. Designation of the Harvest Inspector.

(Name) is designated Harvest Inspector (HI). The major duties and responsibilities include:

- (1) Assisting the Sale Administrator in day-to-day contacts with the purchaser and inspecting operations for compliance with contract requirements.**
- (2) Notifying the purchaser's field supervisor or other purchaser's representatives of the quality of work being performed, as appropriate. (Exclude this sentence if this authority is not delegated below the SA.)**
- (3) Marking damaged trees for cutting and removal.**
- (4) Designating locations of waterbars or other erosion control measures.**
- (5) Recommend agreements, approvals and acceptance of specific work items.**
- (6) Coordinating with law enforcement personnel when unnecessary cutting or damage to undesignated timber occurs.**

e. Designation of the Construction Inspector.

The Construction Inspector (CI) for this sale is (name and contact information). The major duties and responsibilities include:

- (1) Assisting the Engineering Representative and Forest Service Representative in day-to-day monitoring of the purchaser's operations relating to specified road construction.**
- (2) Notifying the purchaser when work needs improvement in accordance with the contract.**
- (3) Completing the Contract Daily Diary or Timber Sale Inspection Report, test record forms, material receipts, and similar documents.**
- (4) Reporting needed changes in drawings and specifications for action by the Engineering Representative.**
- (5) Reporting the purchaser's request for substitution of material or other changes for action by the Engineering Representative.**
- (6) Anticipating problems such as inclement weather or defective specifications and informing the Engineering Representative.**

3. Optional Paragraph if the Forest Service Representative and Engineering Representative Designate Other Sale Administration Team Members.

The Forest Service Representative, and Engineering Representative, will designate in writing others who will assist them in the on-the-ground administration of this contract. Included with these designations will be a delegation of authority table listing the specific contract authorities delegated to those individuals.

4. Optional Paragraph if a Pre-Operations Meeting is Requested.

The Forest Service Representative is requesting a pre-work conference with your representatives before operations begin. Please contact the Forest Service Representative to arrange for the meeting.

5. Optional Paragraph Concerning Erosion Control. If there has been a request for Forest Service to do the erosion control work add the following:

You have indicated that you want the Forest Service to do erosion control work on this timber sale. The erosion control work includes (waterbarring, road blocking, and seeding and fertilizing). You are responsible for completing other erosion control work where required to control erosion. If the request is approved by the Forest Service, we will contact you regarding the required advance deposits for this work and send you the Timber Purchaser's Request for Work Form for signature.

77.13 - Additional Discretionary Paragraphs for Contract Execution Letters

The Contracting Officer may add additional special instructions or any specific requirements for the Purchaser to the contract execution letter.

77.2 - Delegation of Forest Service Sale Administration Team Members

The Contracting Officer shall delegate members to the timber sale contract administration team, as needed (FSM 2450.46), that meet or exceed the minimum requirements in FSM 2452.4. This delegation may be done by one of three methods:

1. **Delegation Letter to Each Individual.** This is the preferred method of delegation of the sale administration team members. The Contracting Officer may delegate authority to the contract administration team by letter to each individual or only to the Forest Service Representative and Engineering Representative (FSH 2409.15, sec. 04)). The Forest Service Representative may delegate authority to the Sale Administrator and the Harvest Inspector, and the Engineering Representative may delegate authority to the Construction Inspector.

Refer to the following exhibits for sample delegation of authority letters:

- a. exhibit 01 for a sample delegation of authority letter to the Forest Service Representative,
 - b. exhibit 02 for a sample delegation of authority letter to the Engineering Representative,
 - c. exhibit 03 for a sample delegation of authority letter to the Sale Administrator,
 - d. exhibit 04 for a sample delegation of authority letter to the Harvest Inspector, and
 - e. exhibit 05 for a sample delegation of authority letter to the Construction Inspector.
2. **Delegation in the Execution Letter.** The Contracting Officer may delegate authority to each member of the sale administration team or only to the Forest Service Representative and Engineering Representative in an execution letter to the Purchaser by naming the individual and listing the sale administration team member's primary duties (secs. 77.11 and 77.12).
 3. **Delegation of Authority Table.** The Contracting Officer may use a delegation of authority table maintained by each Region and attach it to the contract execution letter.

77.2 - Exhibit 01

Sample Letter for Delegation of Authority To Forest Service Representative



United States
Department of
Agriculture

Forest
Service

Name of Forest
Service Unit

Address of Forest
Service Unit

File Code: 2450
Route To:

Date:

Subject: Delegation of Authority, Forest Service Representative

To: (Name)

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

This letter is notice of your delegation as Forest Service Representative for the (name of sale) Timber Sale, Contract Number (#). In accordance with contract provision (Add for Timber Sale Contract forms FS-2400-6/6(T), FS-2400-13/13(T) or FS-2400-3(S)(T)(P) : B(T)6.1). (Add for Timber Sale Contract form FS-2400-4: General Condition 18 or GC 6.1), it will be your responsibility to: (1) receive notices in regard to performance under this contract, (2) take action in relation to this contract, and (3) be readily available to the area of construction and logging operations. (Add as appropriate: You are delegated authority to designate a Sale Administrator and Harvest Inspector to assist you in the above contractual duties.) (Add as appropriate: In addition, refer to (the attached or FSM/FSH [reference]) Delegation of Authority List that shows the delegated authority for contracts.)

(Add if the FSR will delegate the Sale Administrator and Harvest Inspector: You are responsible for designating the Sale Administrator and Harvest Inspector.)

I am reserving the following authorities to myself:

1. Approving contract modifications.
2. Approving contract extensions.
3. Approving contract term adjustments.
4. Approving letters of credit.

77.2 - Exhibit 01—Continued

Sample Letter for Delegation of Authority to Forest Service Representative

5. Authorizing interruption or delay of operations.
6. Approving temporary reductions of the downpayment.
7. Adjusting periodic payment schedule dates.
8. All actions falling within the Contract Disputes Act.

(Add as appropriate.)

9. Other, and so forth.

If you have any questions, please contact me at (telephone #).

(NAME OF CONTRACTING OFFICER)
Contracting Officer

(Add if appropriate.) Enclosure: Delegation of Authority List

cc: (Name of Ranger District) RD
(Name of Sale Administrator), SA
(Name of Harvest Inspector), HI
(Name of Engineering Representative), ER
(Name of Construction Inspector), CI
(Name and address of Purchaser)
(Other)

77.2 - Exhibit 02

Sample Letter for Delegation of Authority To Engineering Representative



United States
Department of
Agriculture

Forest
Service

Name of Forest
Service Unit

Address of Forest
Service Unit

File Code: 2450
Route To:

Date:

Subject: Delegation of Authority, Engineering Representative

To: (Name)

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

This letter is notice of your delegation as Engineering Representative for the (name of sale) Timber Sale, Contract Number (#). In accordance with contract provision B(T)6.1, it will be your responsibility to administer the specified road construction provisions of the above designated timber sale contract. You are authorized to: (1) receive notices regarding specified road construction, and (2) take action to ensure that specified roads are constructed in accordance with drawings, specifications, and other terms of the timber sale contract. Such action may include: (1) making minor changes in design, such as adjustment in horizontal and vertical alignment, that do not exceed specified tolerances, that are necessary to maintain or balance earthwork quantities substantially as designed and adjustments for variation in quantities under B(T)5.251, (2) necessary adjustments, such as changes in grading elevation or alignment to obtain compliance with drawings and specifications, and (3) in the event of physical changes, design changes, and construction adjustments, you will prepare drawings, specifications, and cost estimates for the changed work as prescribed by the contract for Contracting Officer approval. You are delegated authority to designate a Construction Inspector to assist you in the above contractual duties. (Add as appropriate: In addition, refer to (the attached or FSM/FSH [reference]) Delegation of Authority List that shows the delegated authority for contracts.)

If you have any questions, please contact me at (telephone #).

(NAME OF CONTRACTING OFFICER)

Contracting Officer

(Add if appropriate.) Enclosure: Delegation of Authority List

cc: (Name of Ranger District) RD
(Name of Forest Service Representative), FSR
(Name of Harvest Inspector), HI
(Name of Construction Inspector), CI
(Name and address of Purchaser)

77.2 - Exhibit 03

Sample Letter for Delegation of Authority To Sale Administrator



United States
Department of
Agriculture

Forest
Service

Name of Forest
Service Unit

Address of Forest
Service Unit

File Code: 2450
Route To:

Date:

Subject: Delegation of Authority, Sale Administrator

To: (Name)

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

This letter is notice of your delegation as Sale Administrator for the (name of sale) Timber Sale, Contract Number (#). In accordance with contract provision (Add for Timber Sale Contract Forms FS-2400-6/6(T), FS-2400-3(S)(T)(P) or FS-2400-13/13(T): B(T)6.1), (add for Timber Sale Contract Form FS-2400-4: General Condition 18 or GC 6.1), it will be your responsibility to: (1) assist the Forest Service Representative in on-the-ground administration of the contract, except for specified road construction, (2) inspect operations to determine compliance with contract requirements, (3) be readily available to the area of construction and logging operations, (4) act as primary contact with the purchaser's representatives for timber harvest activities, (5) approve locations of temporary roads, landings, skid trails, and other temporary facilities, (6) make other on-the-ground approvals and agreements within delegated authority, (7) initiate billings for payments required by the contract or on request by the purchaser's representative, (8) refer differences in contract interpretation to the Forest Service Representative, (9) give oral notice of breach of contract and suspend the purchaser's operations when breach constitutes immediate threat to human life or a threat of immediate and irreparable resource damage, (10) coordinate with law enforcement personnel when unnecessary cutting or damage to undesignated timber occurs, and (11) report other breaches of contract to the Forest Service Representative. (Add as appropriate: In addition, refer to (the attached or FSM/FSH [reference]) the Delegation of Authority List that shows the delegated authority for contracts.)

(Add if appropriate: Also, enclosed is a letter from the District Ranger that identifies the resource concerns and priorities for this timber sale.)

If you have any questions, please contact me at (telephone #).

NAME OF CONTRACTING OFFICER or FOREST SERVICE REPRESENTATIVE
Contracting Officer or Forest Service Representative

77.2 - Exhibit 03—Continued

(Add if appropriate.) Enclosure: Delegation of Authority List

cc: (Name of Ranger District) RD
(Name of Forest Service Representative), FSR
(Name of Harvest Inspector), HI
(Name of Engineering Representative), ER
(Name of Construction Inspector), CI
(Name and address of purchaser)
(Other)

77.2 - Exhibit 04

Sample Letter for Delegation of Authority To Harvest Inspector



United States
Department of
Agriculture

Forest
Service

Name of Forest
Service Unit

Address of Forest
Service Unit

File Code: 2450
Route To:

Date:

Subject: Delegation of Authority, Harvest Inspector

To: (Name)

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

This letter is notice of your delegation as Harvest Inspector for the (name of sale) Timber Sale, Contract Number (#). In accordance with contract provision (Add for Timber Sale Contract Forms FS-2400-6/6(T), FS-2400-3(S)(T)(P) or FS-2400-13/13(T), B(T)6.1), (add for Timber Sale Contract form FS-2400-4: General Condition 18 or GC6.1), it will be your responsibility to: (1) assist the Sale Administrator in day-to-day contacts with the purchaser and inspect operations for the quality of work performed in accordance with contract requirements, (2) notify the purchaser's field supervisor or other purchaser's representatives when work needs improvement in accordance with the contract, as appropriate, (3) mark damaged trees for cutting and removal, (4) designate locations of waterbars or other erosion control measures, (5) recommend agreements and approvals, and (6) coordinate with law enforcement personnel when unnecessary cutting or damage to undesignated timber occurs. (Add as appropriate: In addition, refer to (the attached or FSM/FSH [reference]) the Delegation of Authority List that shows the delegated authority for contracts.)

If you have any questions, please contact me (telephone #).

(NAME OF FOREST SERVICE REPRESENTATIVE)
Forest Service Representative

(Add if appropriate.) Enclosure: Delegation of Authority List

cc: (Name of Ranger District) RD
(Name of Contracting Officer)
(Name of Sale Administrator), HI
(Name of Engineering Representative), ER
(Name of Construction Inspector), CI
(Name and address of purchaser)
(Other)

77.2 - Exhibit 05

Sample Letter for Delegation of Authority To Construction Inspector



United States
Department of
Agriculture

Forest
Service

Name of Forest
Service Unit

Address of Forest
Service Unit

File Code: 2450
Route To:

Date:

Subject: Delegation of Authority, Construction Inspector

To: (Name)

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

This letter is notice of your delegation as Construction Inspector for the (name of sale) Timber Sale, Contract Number (#). In accordance with contract provision B(T)6.1, it will be your responsibility to:

(1) assist the Engineering Representative in day-to-day monitoring of the purchaser's operations relating to specified road construction, (2) notify the purchaser of the quality of work being performed, (3) complete the Contract Daily Diary or Timber Sale Inspection Report, test record forms, material receipts, and similar documents, (4) report needed changes in drawings and specifications for action by the Engineering Representative, (5) report the purchaser's request for substitution of material or other changes for action by the Engineering Representative, and (6) anticipate problems such as inclement weather or defective specifications and inform the Engineering Representative.

If you have any questions, please contact me (telephone #).

(NAME OF ENGINEERING REPRESENTATIVE)
Engineering Representative

(Add if appropriate.) Enclosure: Delegation of Authority List

cc: (Name of Ranger District) RD
(Name of Contracting Officer)
(Name of Forest Service Representative)
(Name of Sale Administrator), HI
(Name of Harvest Inspector), HI
(Name and address of purchaser)
(Other)

77.3 - Repudiation

A timber sale contract is repudiated when the highest bidder fails to make a downpayment, provide a satisfactory performance bond, or to execute the contract. Follow the procedures in section 71.1 when a contract is repudiated.

78 - Tracking and Reporting Gate 6

In addition to making the sale award and finalizing sale documents, this gate is not complete until the appropriate information about the sale, its contract, and the timber Purchaser are entered into the Timber Information Manager (TIM) application. This step enables electronic transfer of information to the Forest Products Financial System (FPFS) and other automated reporting systems. The date of the Contracting Officer's award letter is considered the sold or award date for reporting purposes.

78.1 - Documentation

The signed timber sale contract is the major document completed at Gate 6. At the time of completion of the activities for Gate 6, establish a timber sale folder to retain pertinent information and correspondence. Retain background data and records from the sale preparation process in a presale folder or file for the life of the sale and for those timeframes specified in FSH 6209.11, chapter 40 - File Designations And Dispositions (2020) for timber sale contracts. The following background documents should be retained in the official contract folder:

1. Documentation of small business status.
2. Election of Forest Service road construction.
3. Bonding documents.
4. Determination of purchaser responsibility by the Contracting Officer.
5. Any other documentation relevant to the contract.

Financial information provided to the Contracting Officer by the Purchaser in support of a Financial Ability Determination request shall be secured by the CO until it can be acted upon or forwarded to the Resource Audit Branch (RAB) for a determination. The general public, employees of the Forest Service, and other agencies not having duties related to award of the contract shall not have access to the financial data provided by the Purchaser, except as authorized or required by law, or pursuant to the Purchaser's written permission. Financial information provided by the Purchaser pursuant to 36 CFR 223.101, is not subject to disclosure under the Freedom of Information Act. The financial report provided by the Resource Audit

Branch to the Contracting Officer and any pertinent non-financial info provided by the Purchaser that the CO uses to support the responsibility/capability determination shall be kept in a secure locked cabinet.

The principal purpose of the financial ability determination is to protect the public interest by a showing of Purchaser's current financial ability to complete the timber sale contract. No other use of this information is appropriate. At closure of the contract follow retention guidelines in FSH 6209.11, section 42-2020 and FSH 6209.11, section 61 for the disposition of special records containing confidential business information.

The Gate 6 date is equal to the award date entered into TIM and is completed when award has been made. The Contracting Officer will send the contract execution letter, designate the Forest Service sale administration team members, and send the executed contract to the Purchaser. Any remaining financial transactions will be entered and approved for processing in FPFS.

78.2 - Sale Tracking and Reporting

The Timber Information Manager (TIM) locks Gate 6 after the Gate Final Report has been printed.

78.3 - Tracking Contracts After Gate 6

Tracking of certain aspects of timber sales through FPFS is required after sale award. The most crucial information to track includes Purchaser claims, modifications, extensions, agreements to remove optional material, changes in road maintenance, rate redeterminations, third-party agreements, changes in surety, sale closure, default of the contract, and other changes in the Purchaser's status.