

Bureau of Indian Affairs, Interior

§ 163.17

forest products shall be made only after advertising.

(a) The advertisement shall be approved by the officer who will approve the instrument of sale. Advertised sales shall be made under sealed bids, or at public auction, or under a combination thereof. The advertisement may limit sales of Indian forest products to Indian forest enterprises, members of the tribe, or may grant to Indian forest enterprises and/or members of the tribe who submitted bids the right to meet the higher bid of a non-member. If the estimated stumpage value of the forest products offered does not exceed \$15,000, the advertisement may be made by posters and circular letters. If the estimated stumpage value exceeds \$15,000, the advertisement shall also be made in at least one edition of a newspaper of general circulation in the locality where the forest products are situated. If the estimated stumpage value does not exceed \$50,000, the advertisement shall be made for not less than 15 days; if the estimated stumpage value exceeds \$50,000 but not \$250,000, for not less than 30 days; and if the estimated stumpage value exceeds \$250,000, for not less than 60 days.

(b) The approving officer may reduce the advertising period because of emergencies such as fire, insect attack, blowdown, limitation of time, or when there would be no practical advantage in advertising for the prescribed period.

(c) If no instrument of sale is executed after such advertisement, the approving officer may, within one year from the last day on which bids were to be received as defined in the advertisement, permit the sale of such forest products. The sale will be made upon the terms and conditions in the advertisement and at not less than the advertised value or the appraised value at the time of sale, whichever is greater.

§ 163.16 Forest product sales without advertisement.

(a) Sales of forest products may be made without advertisement to Indians or non-Indians with the consent of the authorized tribal representatives for tribal forest products or with the consent of the beneficial owners of a majority Indian interest of individually

owned Indian land, and the approval of the Secretary when:

(1) Forest products are to be cut in conjunction with the granting of a right-of-way;

(2) Granting an authorized occupancy;

(3) Tribal forest products are to be purchased by an Indian tribal forest enterprise;

(4) It is impractical to secure competition by formal advertising procedures;

(5) It must be cut to protect the forest from injury; or

(6) Otherwise specifically authorized by law.

(b) The approving officer shall establish a documented record of each negotiated transaction. This will include:

(1) A written determination and finding that the transaction is a type allowing use of negotiation procedures;

(2) The extent of solicitation and competition, or a statement of the facts upon which a finding of impracticability of securing competition is based; and

(3) A statement of the factors on which the award is based, including a determination as to the reasonability of the price accepted.

§ 163.17 Deposit with bid.

(a) A deposit shall be made with each proposal for the purchase of Indian forest products. Such deposits shall be at least:

(1) Ten (10) percent if the appraised stumpage value is less than \$100,000 and in any event not less than \$1,000 or full value whichever is less;

(2) Five (5) percent if the appraised stumpage value is \$100,000 to \$250,000 but in any event not less than \$10,000; and

(3) Three (3) percent if the appraised stumpage value exceeds \$250,000 but in any event not less than \$12,500.

(b) Deposits shall be in the form of either a certified check, cashier's check, bank draft, postal money order, or irrevocable letter-of-credit, drawn payable as specified in the advertisement, or in cash.

(c) The deposit of the apparent high bidder, and of others who submit a written request to have their bids considered for acceptance will be retained

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pending acceptance or rejection of the bids. All other deposits will be returned following the opening and posting of bids.

(d) The deposit of the successful bidder will be forfeited and distributed as damages to the beneficial owners if the bidder does not:

(1) Furnish the performance bond required by §163.21 of this part within the time stipulated in the advertisement for sale of forest products;

(2) Execute the contract; or

(3) Perform the contract.

(e) Forfeiture of a deposit does not limit or waive any further claims for damages available under applicable law or terms of the contract.

(f) In the event of an administrative appeal under 25 CFR part 2, the Secretary may hold such bid deposits in an escrow account pending resolution of the appeal.

§ 163.18 Acceptance and rejection of bids.

(a) The high bid received in accordance with any advertisement issued under authority of this part shall be accepted, except that the approving officer, having set forth the reason(s) in writing, shall have the right to reject the high bid if:

(1) The high bidder is considered unqualified to fulfill the contractual requirement of the advertisement; or

(2) There are reasonable grounds to consider it in the interest of the Indians to reject the high bid.

(b) If the high bid is rejected, the approving officer may authorize:

(1) Rejection of all bids; or

(2) Acceptance of the offer of another bidder who, at bid opening, makes written request that their bid and bid deposit be held pending a bid acceptance.

(c) The officer authorized to accept the bid shall have the discretion to waive minor technical defects in advertisements and proposals, such as typographical errors and misplaced entries.

§ 163.19 Contracts for the sale of forest products.

(a) In sales of forest products with an appraised stumpage value exceeding \$15,000, the contract forms approved by the Secretary must be used unless a special form for a particular sale or

class of sales is approved by the Secretary.

(b) Unless otherwise directed, the contracts for forest products from individually-owned Indian land will be paid by remittance drawn to the Bureau of Indian Affairs and transmitted to the Superintendent. Upon the request of the tribe, the contracts for tribal forest products may require that the proceeds be paid promptly and directly into a bank depository account designated by such tribe, or by remittance drawn to the Bureau of Indian Affairs and transmitted to the Superintendent.

(c) By mutual agreement of the parties to a contract, contracts may be extended, modified, or assigned subject to approval by the approving officer, and may be terminated by the approving officer upon completion or by mutual agreement.

§ 163.20 Execution and approval of contracts.

(a) All contracts for the sale of tribal forest products shall be executed by the authorized tribal representative(s). There shall be included with the contract an affidavit executed by the authorized tribal representative(s) setting forth the resolution or other authority of the governing body of the tribe. Contracts must be approved by the Secretary to be valid.

(b) Contracts for the sale of individually owned forest products shall be executed by the beneficial Indian owner(s) or the Secretary acting pursuant to a power of attorney from the beneficial Indian owner(s). Contracts must be approved by the Secretary to be valid.

(1) The Secretary may, after consultation with any legally appointed guardian, execute contracts on behalf of minors and beneficial Indian owners who are non compos mentis.

(2) The Secretary may execute contracts for a decedent's estate where ownership has not been determined or for those persons who cannot be located after a reasonable and diligent search and the giving of notice by publication.

(3) Upon the request of the owner of an undivided but unrestricted interest in land in which there are trust or restricted Indian interests, the Secretary