

## Forest Service, USDA

## § 223.303

(3) *Agreements.* Agreements entered into under this subpart are not subject to grant regulations found in 2 CFR part 200 as adopted and supplemented by the USDA in 2 CFR parts 400, 416, and 422.

(4) *Other provisions.* Additional terms and conditions for contracts and agreements may be added to a contract or agreement entered into under this subpart, in accordance with applicable law and to the extent determined to be necessary by the Forest Service.

(c) *Parties to contracts and agreements.* The Forest Service may enter into contracts and agreements under this part with private persons, private entities and public entities.

### § 223.301 Determination of type of contract or agreement.

(a) *Use of a contract or agreement.* When the Forest Service initiates a project under this subpart, a determination will be made whether to use a contract or an agreement to implement the project.

(b) *Type of contract.* If the Forest Service determines that a contract will be utilized:

(1) *Procurement of service contracts.* When the value of timber or other forest products removed through the contract will be less than the total value of the service work items received by the Forest Service, the activity shall be considered a procurement of a service and a contract, for a period not to exceed 10 years, will be utilized as provided in § 223.303 or

(2) *Sale of property contracts.* When the value of timber or other forest products removed through the contract is equal to or exceeds the total value of the service work items received by the Forest Service, the activity shall be considered a sale of property and a contract, for a period not to exceed 10 years, will be utilized as provided in § 223.304.

(c) *Best interest of the government determination.* The Forest Service official who makes a determination under paragraph (b) of this section shall document in the contract file the basis for the determination that:

(1) It is in the best interest of the government that a sale of property contract is more suitable for a contract

that would otherwise be subject to paragraph (b)(1) of this section; or

(2) It is in the best interest of the government that a procurement of service contract is more suitable for a contract that would otherwise be subject to paragraph (b)(2) of this section.

### § 223.302 Award of contracts and agreements.

Section 604(d) of HFRA requires that a source for performance of a stewardship agreement or contract be selected on a best-value basis. A stewardship agreement or contract may also be entered into notwithstanding subsections (d) and (g) of section 14 of the National Forest Management Act of 1976 (16 U.S.C. 472a).

### § 223.303 Procurement of service contracts.

All contracts determined under § 223.301(b)(1) to be a contract for receipt of a service shall:

(a) Be administered under the Federal Acquisition Regulations, Title 48 of the Code of Federal Regulations including the regulations issued by the Department of Agriculture set forth in Chapter 4 of Title 48; and

(b) Provide for a fire liability provision. All contracts under this section shall contain a fire liability provision that is in substantially the same form as the fire liability provision contained in integrated resource timber contracts, as described in Forest Service contract numbered 2400-13, part H, section 4.

(c) Utilize the following provisions of subparts A and B of this part:

(1) Section 223.1 Authority to sell timber.

(2) Section 223.3 Sale of seized material.

(3) Section 223.14 Where timber may be cut.

(4) Section 223.30 Consistency with plans, environmental standards, and other management requirements.

(5) Section 223.34 Advance payment.

(6) Section 223.36 Volume determination.

(7) Section 223.37 Revegetation of temporary roads.

(8) Section 223.38 Standards for road design and construction.