

**Standard Provisions  
Lump Sum Timber Sale  
Contract  
Form 5450-3**

Session Four  
10/14/12

## Introduction to the Conference Calls

- This is Session Four (2nd Wednesday of each month)
- We have 3 presenters that will be presenting the sections. They are:
  - Vince Randall – Grants Pass Field Office, Medford District in Oregon
  - Werner Krueger – Swiftwater Field Office, Roseburg District in Oregon
  - Mike Bechdolt – O&C Forester, Washington DC

Welcome to Session 4 of the Standard Provisions of the BLM Timber Sale Contract. These conference calls will be held on the (2<sup>nd</sup> Wednesday) of each month until each of the provisions are discussed.

We have 3 presenters that will be presenting the sections. They are:

Vince Randall – Grants Pass Field Office, Medford District in Oregon

Werner Kruger – Swiftwater Field Office, Roseburg District in Oregon

Mike Bechdolt – Klamath Falls Field Office, Lakeview District also in Oregon.

## Ground Rules

- Active Listening – get involved
- Approximately an hour
- If in loud environment - consider mute button

For this format to work, you really need to get involved. Share your opinions and experiences

We'll try to keep this session to about an hour

Its very important!!!! If your office environment gets a bit noisy for some reason, consider using the mute button on your phone until things clear, however, don't check out of the discussions because you involvement is important.

What else are we forgetting?

Ok, then, lets get on with things...

## Other Info

- Slides have the new contract language
- Changes are in **RED** text
- Feel free to disagree or bring up scenarios
- If a question cannot be answered it will be researched and discussed in the next call

## List of Sections for today

- Section 17 – Limitations of Road Use
- Section 18 – Acceptance of Road Construction
- Section 19 – Cost Adjustment for Physical Change
- Section 20 – Design Change
- Section 21 – Rights and Obligations After Time for Removal of Personal Property or Cancellation of the Rights of the Purchaser
- Section 22 – Protection of Survey Monuments, Witness Corners, Reference Monuments, and Bearing Trees
- Section 23 – Protection of Cultural Resources
- Section 24 – Purchaser's Representative
- Section 25 – Simultaneous Use of Contract Area by Others
- Section 26 – Watershed Protection – Water Quality, Erosion Control, and Soil Damage

Here is a list of the sections to be covered today

## Section 17 – Limitations of Road Use

### **Sec. 17. Limitations of Road Use**

(a) Purchaser's right under this contract to use existing Government roads described herein, or roads to be constructed, is limited to removal of timber sold **and the transport of mineral materials** under this contract; *Provided, however,* that this provision shall not limit any right to use Government roads or rights-of-way which have been granted to Purchaser pursuant to 43 CFR Group 2800.

(b) For the purpose of protecting roads described herein, Purchaser shall immediately discontinue use of said roads upon receipt of written notice that the Authorized Officer has determined that continued use will cause excessive damage to said roads.

### **Werner Krueger**

(a) Limits road use to this timber sale, unless you have a right-of-way permit. So this contract won't serve to provide access to private timber.

(b) Reserves the right to temporarily suspend Purchaser's use of BLM roads when continued use will cause excessive damage. The Incredible Holt example.

43 CFR Group 2800 is Rights-of-Way under the Federal Land and Policy Management Act.

## **Section 18 – Acceptance of Road Construction**

### **Sec. 18. Acceptance of Road Construction**

- (a) Whenever Purchaser shall deliver to the **Contracting Officer** a written statement that the road construction is complete, pursuant to the contract terms, the Authorized Officer shall promptly inspect such road. If the contract road construction requirements have been completed to the satisfaction of the Contracting Officer, Purchaser will be given written notice of acceptance, and, except as provided in Sec. 12, be released from further liability or duty for construction or reconstruction of such road.
  
- (b) Notwithstanding acceptance of any road under this section, Purchaser shall remain liable for maintenance and repair of any such road in accordance with the provisions of Sec. 16.

### **Mike Bechdolt**

**Section 18(a)** provides that the Purchaser will be granted written acceptance of road construction required by the contract upon its completion to the satisfaction of the Contracting Officer. Acceptance can be granted on logical segments of a road versus the entire road. When written acceptance is given the Purchaser, it serves to release them from further duty or liability for the construction or reconstruction of the road. For example, if upon completion of a road by the Purchaser and acceptance of the construction by the Contracting Officer, a flood, or landslide, or other natural phenomenon destroys the road, the Purchaser is not required to rebuild the road or restore it to usable condition at their expense. Rather, the Government stands the loss.

There is an exception to the release from liability for construction and this is tied directly to Section 12 of the contract. If the failure of the road is due to a breach of contract or the wrongful or negligent acts of the Purchaser, their contractors, subcontractors, or the employees of any of them, the release from liability is of no effect and the Purchaser is required to pay for or repair the damage.

Section 18(a) should be applied as follows: When the Purchaser has completed road construction pursuant to the terms of the contract, they so advise the

Authorized Officer in writing. Upon receipt of the written notification, the Authorized Officer must promptly inspect the road. If road construction meets the contract requirements and is satisfactory to the Contracting Officer, they provide the Purchaser with a written notice of acceptance. If road construction is unsatisfactory, the Authorized Officer must point out the deficiencies to the Purchaser. When deficiencies have been corrected, the Purchaser must again notify the Authorized Officer in writing and request an inspection.

**Section 18(b)** requires that the Purchaser remain responsible for the maintenance of accepted roads in accordance with the provision of Sections 16 and 42 of the contract. Maintenance of roads constructed under the terms of the contract must be spelled out in Section 42.

# Questions

Question: Can a Purchaser begin logging on a contract prior to completing road construction or resurfacing? If so, what are some examples?

Question: Why is acceptance of Road Construction important when it comes to 1<sup>st</sup> and 2<sup>nd</sup> Anniversary Payments?

Question: What would be an example of a road failure where the Purchaser might be found liable?



## Answer to Questions 3

Buried stumps beneath the road bed in lieu of excavating, wrong size culvert, inadequate ditching, inadequate water dips, etc...)

## **Section 19 – Cost Adjustment for Physical Change**

### **Sec. 19. Cost Adjustment for Physical Changes**

If, prior to acceptance of a road under Sec. 18, a major physical change, caused by a single event, and not due to negligence of Purchaser, Purchaser's contractors, subcontractors, or the employees of any of them, results in additional construction work by Purchaser involving an additional estimated cost of more than: (1) \$1,000 for sales under one million board feet; (2) \$1.00 per thousand board feet for sale of one to three million board feet; or (3) \$3,000 for sales over three million board feet, Government shall become responsible for any estimated cost which exceeds the above amounts. Government may elect to meet its share by reducing the total purchase price or by payment of such cost to Purchaser or by performing the Purchaser's share of the necessary work. Where the Contracting Officer determines that the damages caused by such major physical change are so great that restoration, reconstruction, or construction is not practical under the cost-sharing arrangement, the Contracting Officer may cancel the timber sale contract notwithstanding any provisions thereof.

### **Vince Randall**

**Physical changes caused by a single event include flood events, landslides, wildfires, intense storm event, and are not due to negligence of the Purchaser or their representatives, that damage newly constructed road prior to acceptance of said road. The Government is responsible for costs above listed amounts. Purchaser is responsible for repair costs below or equal to listed amounts.**

**The Government choices to rectify a physical change situation include:**

- **The Purchaser fixes the road and the Government either reduces total purchase price, or the Government makes direct payment to Purchaser to fix (deal with a Scaled Sale with final payment?)**
- **The Government can repair the road with it's own road crew or by a Government contractor**
- **The Government can cancel the contract if the repair costs are too great with State Director approval (per 43 CFR 1815.1-1(b)). (Can the Government just delete the unit/s affected by the event and Mod the contract? Elk Valley Roadway example)**
  
- **Under normal circumstances, the preferred method is adjustment of the**

**total purchase price via a contract modification. If the contract has been paid in full, a refund may be made in accordance with Manual Section 1374.**

## Section 19 – Cost Adjustment for Physical Change

### **Sec. 19. Cost Adjustment for Physical Changes** (continued)

The estimated cost of additional work shall be calculated by the Authorized Officer using BLM-prescribed appraisal procedures. Such cost shall include the cumulative estimated costs of repairing damage from slides, washouts, landslips, fire, etc., caused by said event. If necessary, plans and contract specifications shall be revised, and the contract modified, to meet the new conditions. Purchaser must obtain advance approval from the Contracting Officer for such additional work in order for Purchaser to be eligible for cost adjustment under this section. The payment for physical changes shall be made by crediting against the total actual purchase price and may be accomplished by applying the credit to future installments owed by the Purchaser

### **Vince Randall**

**The cost for repair of the Physical Change event is calculated by the Government using BLM approved appraisal methods. The contract will need to be modified to meet the new conditions. There must be advance approval by the Contracting Officer for the additional work or the Purchaser will not be eligible for cost adjustment, and the Purchaser must agree to Mod before work can begin.**

How does the last sentence match what was listed in previous slide with two payment options listed to Purchaser – a reduction of total purchase price, or direct payment to purchaser?

## Section 19 – Cost Adjustment for Physical Change

- Section 19 provides for Government sharing in the cost of repair of major physical changes due to a single event such as:
  - A local flood
  - An intense rainstorm
  - A mass soil movement
  - A large fire
- Purchaser does not have the full responsibility for repair of road damages occurring before the acceptance of road construction.

**Vince Randall**

## Section 19 – Cost Adjustment for Physical Change

- Prescribes dollar levels for BLM sharing in the cost to repair major physical damages, due to a single event, which occur on a road being constructed, but prior to acceptance. Government shall become responsible for any estimated cost which exceeds the amounts below:
  - \$1,000 for sales under one million board feet;
  - \$1.00 per thousand board feet for sale of one to three million board feet; or
  - \$3,000 for sales over three million board feet.

**Vince Randall**

## **Section 19 – Cost Adjustment for Physical Change**

- The Government has three options:
  - reduction of the purchase price through contract modification, or
  - payment of the cost to the Purchaser, or
  - performing its share of the work.
- If cost to repair damage is so high that repair is not practical the contract may be canceled.
- There must be advance approval by the Contracting Officer

### **Vince Randall**

The Government has three options for meeting its share cost of the additional work: reduction of the purchase price through contract modification, or payment of the cost to the Purchaser, or performing its share of the work.

In the event the Government's share would be so great as to not be economically justifiable, the contract should be reviewed with the State Director. 43 CFR 1815.1-1(b) provides that where the damages are so great that restoration, reconstruction, or construction is not practical under this cost-sharing arrangement, the Contracting Officer may cancel the contract.

There must be advance approval by the Contracting Officer for the additional work or the Purchaser will not be eligible for cost adjustment.

## Section 20 – Design Change

### **Sec. 20. Design Change**

If the Purchaser requests and the Contracting Officer agrees to a design change of a substantial nature to any road, road structure, or bridge required to be constructed or improved under the terms of this contract, or, in the absence of such a request, the Contracting Officer determines that a design change of a substantial nature is needed, the total purchase price shall be revised to reflect the estimated increase or decrease in cost from such design change. A design change of a substantial nature is one that would result in a cost adjustment of **\$2,000** or more.

### **Werner Krueger**

Very powerful tool.

Provides authority to modify the contract to remedy design errors or unanticipated environmental complications during road construction/renovation through adjustments of the total purchase price (value of the timber – logging costs).

May be initiated by the Purchaser – bilateral modification – or by the BLM – unilateral modification. Good practice to reach agreement beforehand regardless.

Note the “substantial nature” clause, which has been revised on the December 2011 5450-3 to be \$2,000.00; it used to be \$1,000.00. Adjusted for inflation I suppose.

Lurch example – purchase price reduced to compensate Purchaser for additional work (and increased logging costs).

Adams Apple example – log culvert – purchase price is increased to make BLM whole because Purchaser did not incur the cost of rock haul (reduced logging

costs).

## Section 21 – Rights and Obligations

### *Sec. 21. Rights and Obligations After Time for Removal of Personal Property or Cancellation of the Rights of the Purchaser –*

If any of Purchaser's obligations remain unperformed after expiration of the time for removal of personal property, as set forth in Sec. 40, or if the rights of Purchaser under this contract have been cancelled by Government, all provisions of this contract for the benefit and protection of Government or third parties shall remain in effect until this contract is terminated in its entirety by Government.

#### **\*\*Important\*\***

A contract should not be terminated by the Contracting Officer until all obligations of the Purchaser to either the Government or third parties have been performed

#### **Questions:**

- What contract provisions are often are not completed after the expiration date?
- What is at least one thing the Purchaser is not allowed to do after the expiration date?

### **Mike Bechdolt**

Section 21 of the contract establishes the Purchaser's responsibility for completing work required by the contract even though their right to cut and remove timber/wood products as specified in Section 4 and their right to remove personal property as specified in Section 40 have expired. Also, all provisions of the contract for the benefit and protection of the Government and third parties remain in effect until the contract is terminated by the Government.

For example, slash disposal may carry over for several years for any number of reasons. If during the slash burning the fire should escape and destroy power poles of a privately owned transmission line in the contract area, the provisions of Section 14 would still apply.

The Purchaser cannot escape performance for the benefit or protection of the Government and third parties by permitting their rights to expire.

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For example, slash disposal may carry over for several years for any number of reasons. If during the slash burning the fire should escape and destroy power poles of a privately owned transmission line in the contract area, the provisions of Section 14 would still apply.

The Purchaser cannot escape performance for the benefit or protection of the Government and third parties by permitting their rights to expire.

*Sec. 22. Protection of Survey Monuments, Witness Corners, Reference Monuments, and Bearing Trees*

Purchaser **shall protect all survey monuments, witness corners, reference monuments, and bearing trees against destruction, obliteration, or damage** during operations on the contract area. If any monuments, corners, or accessories are destroyed, obliterated, or damaged by such operations, **Purchaser shall hire an appropriate county surveyor or registered land surveyor** to reestablish or restore the monuments, corners, or accessories, at the same location, using surveying procedures in accordance with the *Manual of Instructions for the Survey of the Public Lands of the United States*, and shall record such survey in appropriate county records. The Authorized Officer may prescribe in writing additional requirements for protection of monuments, corners, and bearing trees.

**Vince Randall**

The Purchaser must protect all survey monuments, corners, and bearing trees during their operations on the contract area. If damaged or destroyed, the Purchaser must hire an appropriate surveyor to reestablish, restore, or replace the corners, bearing trees, etc., using official Survey of Public Lands procedures.

## Section 22 – Protection of Survey Monuments, Witness Corners, Reference Monuments, and Bearing Trees

- BLM must identify corners, bearing trees, etc. located on the contract area.
- Noted on the Exhibit A maps
- Any special protective measures should be in Sec 42

### **Vince Randall**

During sale preparation, BLM must identify the various survey corners, bearing trees, etc., located on the contract area and should note such information on Exhibit A. Any special protective measures needed should be included in Section 42 (**such as: Fall and yard trees away from known survey monuments**).

## Section 23 – Protection of Cultural Resources

### *Sec. 23. Protection of Cultural Resources –*

If in connection with operations under this contract the Purchaser, Purchaser's contractors, subcontractors, or the employees of any of them, discovers, encounters, or becomes aware of any object or sites of cultural value on the contract area, such as historical or prehistorical ruins, graves, grave markers, fossils, or artifacts, the Purchaser shall immediately suspend all operations in the vicinity of the cultural value and shall notify the Authorized Officer of the findings. Operations may resume at the discovery site upon receipt of written instructions and authorization by the Contracting Officer.

### **Werner Krueger**

In western Oregon, Standard Provision 23 used to be included in the Special Provisions of the contract (for at least 10 or 20 years). With the December 2011 revision of 5450-3, it has been moved to the "boiler plate."

States the Purchaser must immediately, of his own volition, cease operations if he becomes aware of any cultural sites in the contract area and notify the Authorized Officer of the findings. Protection of the cultural resources might require a modification of cutting area boundaries as well as an adjustment of the volume and value in Exhibit B... or a change in harvest method might provide the necessary protection. The Contracting Officer must notify the Purchaser in writing what protection measures will be required and when operations can resume.

## Section 23 – Protection of Cultural Resources

- Cultural Resources should be shown on Exhibit A
- Any special protective measures should be included in Sec 42.

### **Werner Krueger**

Any cultural resource known to be on the contract area during sale preparation should be identified on Exhibit A (**How?**) . Any special protective measures needed should be included in Section 42.