Program Guidance – Trial State Timber Sale Bid Bond Waiver Policy
Summary of Changes Based on Public Comments

Comments were accepted by the department from July 12, 2013 until August 2, 2013 regarding this proposed program guidance. The following comments in black text were received by the department, with the department's response to comments included in blue text. The majority of the comments received were supportive of the proposed guidance and several included requests for clarification. As a result of all comments received, the department did not make any changes to the guidance as initially proposed. The final guidance will be issued on or after August 5, 2013. If you have any questions, please contact – Joe Schwantes at: joseph.schwantes@wisconsin.gov.

This will make it easier for the contractors. A question comes up however if a contractor is the highest bidder on multiple sales and then decides to not sign the contract will there be any recourse in place to assure the bidder follows through.

The policy is that if a high bidder fails to sign a contract, they must forfeit 10% of the bid value as a penalty. If they fail to submit the 10% penalty – they are considered an ineligible bidder for a period of 2 years (or until they forfeit the 10% of bid value).

I would say this is a good step in increasing our forestry bid process efficiency. Last bid opening we had 24 State Forest sales, more than a hundred bids and the pile of checks was large. I am in favor of it and I am sure it will save staff time, postage and banking processes not to mention easing the bid process for the contractors. I believe this will broaden the scope of contractors bidding on State Land sales. The risk is minimal for NHAL as we have the performance bond during sale activity and back up if the contract does not get signed.

I think this is a good idea and agree with the justifications listed. I think the enforcement/compliance method should be effective enough. I don't think I've had a logger want to pull out of their bid unless they made a significant error in their math which doesn't happen often. I think the requirement for us on mailing the check in, then waiting, then releasing it, is a lot of unnecessary steps. It's not as if we won't have some kind of money in hand before harvesting starts since we're still requiring bonding. My only comment otherwise would be a 4 week requirement rather than a 6 week requirement to get the bond in and contract signed. If a logger wants a sale, they can usually get the bond or letter of credit together and get the contract signed in 4 weeks even if someone is on vacation. If the logger falls through, with a shorter deadline the department forester can move on that much sooner and try to keep the ball rolling.

The 6 week timeframe is what is currently required for submitting performance bonds and allows a bit more flexibility in timing for a contractor to secure a letter of credit/performance bond.

Why don't we just make it a free-for-all. Let's just give away all are leverage. It leads to irresponsible bidding. Whose idea was this? Under this proposed policy, we are encouraging "part time" producer's. You know the type, farm in the summer, log in the winter. In _____ county Forest, they are the demographic that takes up 90% of the administration and are only 10% of sold stumpage. The county has trended to larger sales to keep this situation somewhat in check. This policy could be considered a hardship for county forests.

The enforcement level required to maintain bid integrity was considered and the effect on bid activity will be monitored during the trial and can be revised or rescinded if it results in irresponsible bidding. This was considered as a way to reduce burden on contractors (tying- up operational capital) and the burden on department foresters in remitting and then refunding bid bonds in accordance with state statute and manual code. The policy will only be implemented on state lands – county forests can set their own bid bond requirements.

Interesting idea. One concern I would have comes from the statement: "If the winning bidder fails to execute the contract and submit an acceptable performance bond, the bidder shall be required to forfeit to the department an amount equal to 10% of the total bid amount. Failure to forfeit the 10% penalty will result in the bidder being considered ineligible to bid on any state timber sales for a two-year period." If the state documents are drafted appropriately the 10% penalty should be mandatory to ever do business with the State. I read the language to imply that if someone refuses to pay the penalty for 2 years they can come back and be in good standing to buy State timber sales. If a contractor had an outstanding bill for stumpage he cut, I can't believe the State would allow them to come back and do business until he paid. I know there have been legal issues on restricting bidding beyond two years for bad behavior on timber sales. However, I would guess that an outstanding debt could be grounds for restricting bidding until that debt is paid.

The appropriate enforcement level required to maintain bid integrity was considered at length. This trial policy selected something that was in the middle of the spectrum – with the idea that during the trial period the department can assess what issues (if any) arise and that if turned into permanent policy the department could adjust if necessary. From review of bid bonds forfeited to the state and to several counties surveyed with varying bid bond requirements – it appears very few bidders fail to sign contracts –hopefully the same will prove true with the proposed policy. If the integrity of bids is undermined and a significant amount of contracts are not signed or the 10% penalty submitted, the department will reassess to ensure the bid integrity is maintained.

May this email serve as feedback on the proposal to temporarily waive bid bonds on State Timber Sales as a trial. Packaging Corporation of America (PCA) supports the proposed policy to waive the bid bond requirement on State timber sale bids. Surveys conducted by the University of Wisconsin, the Wood Supply Research Institute and PCA on the health of the professional logger supported recurring themes. Logging capacity is financially stressed, with an aged workforce (54+), investing minimal capital, with 20% of the business's planning to exit in the near future. The bid bond waiver proposal will

assist in relieving some of the financial stress. The process is solid with a trial period, ending date and plan forward depending upon the results. Finally, it is great to see the Division of Forestry stepping forward to be part of the solution!

Just my two cents worth: I like the idea, as it would save a lot of time and paperwork for both us and the loggers. It is a much friendlier way to do business and shows that we are willing to try and work with these folks where possible. I hear from loggers a lot that they have trouble getting letters of credit quickly and hate to have to double-up their bond money while waiting for a personal check to be returned from Madison following replacing it for their performance bond. I am very concerned about what kind of consequences there would be for anyone who tried to withdraw their winning bid following the opening. You know how buyer's remorse works, especially when someone way outbids the second in line. I think there would have to be steep consequences for any instances of this in order to keep things fair across the board. Perhaps they would be banned from winning any bids in that bid opening and prevented from bidding on any state sales for some length of time. I'm sure you've had experiences where the bid bond has been an asset, although since we've had it in place, I personally have not seen an instance where someone tried to pull their bid after the fact. That might be due to the bid bond and so waiving the need for the bonds could change that dynamic. And while we cannot try to run anyone else's business for them, I do wonder if we won't get some loggers bidding on more than they can realistically handle when there is no bid bond to help make the money "real" to them as they bid. Time will tell on that I guess.

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I noticed the proposed temporary state timber sale bid bond waiver policy (http://dnr.wi.gov/news/input/Guidance.html) currently out for public comment and wanted to check in with you to find out how it would work if a company fails to submit the bond, damages one of our trails in the execution of their work. Since FR would be subtracting 10% from the bid if the contractor subsequently fails to secure a performance bond, would we then work with your program to recover damages? We do have a separate policy on the linear use of trails for logging purposes in the Land Acquisition and Sales Handbook – I'm thinking that your policy would override our current requirements?

This policy is regarding bid bonds NOT performance bonds. The department would still require a minimum of 15% of the sale value (or at least $1,000) to be provided as a performance bond to be

retained in the event of any damages. No company would be allowed to begin work prior to submitting a performance bond. The bid bond has only been utilized to secure the contractors bid as legitimate until a contract is signed and performance bond submitted (essentially to force a high bidder to sign a contract when they are indeed the high bidder).