



TIMBER SALE INFORMATION

8/21/2023

Announcement

A current list of timber sales can be found at:

<https://www.tn.gov/agriculture/forests/state-forests/state-forest-timber-sales.html>

Instructions to Bid on Sale(s)

1. Download the "Invitation to Bid and Pro Forma Contract" using the link for the timber sale(s) you are interested in submitting a bid (for example A-04-21-02). Save the file(s) to your computer. Either:
 - A. Print the "Invitation to Bid" page for each sale that you want to submit a bid and fill out.
 - or
 - B. Digitally fill out the "Invitation to Bid" PDF page for each sale that you want to submit and sign digitally.
2. Complete the "Bid" information for each sale you want to submit a bid. One form must be completed for each individual sale. All "required" information must be provided or the bid will be rejected.
3. Deliver bid - Bids will be accepted in the following methods:
 - ONLINE:
 - **All online bids must be received prior to 1 hour of bid opening date and time** (for example, if a bid opening is scheduled for 10:30 a.m. CDT, then bids will be accepted until 9:30 a.m. CDT on that date).
 - If printed, scan or take a picture of the completed and signed Invitation to Bid form for each sale you are bidding on and save it.
 - If digitally filled out and digitally signed, save the PDF document.
 - Click on the "PLACE BID" link in the timber sale table to open the Timber Sale Bid Contact form. The form is the same for all sales.
 - Fill out the contact information, select the individual sale # you are bidding on from the drop-down list, and upload your signed invitation to bid form corresponding to the sale # selected.
 - Click "Submit Form" to submit.
 - Repeat these steps for each sale you are bidding on. Be sure to match the selected sale # in the drop-down list with your scanned bid form.



- HAND DELIVERY
 - The appropriate bid number must be on the outside of the envelope and the envelope sealed. Only one bid per envelope. Please print the name of the bidder, organization, and telephone number on the outside of the bid using the 'Pre-printed Bid Envelope Label' provided in the bid packet. The State assumes no responsibility for lost or misdirected bids.
 - Bring the sealed Bid to the Bid Opening location during normal business hours prior to the specified time bids are to be opened.
- MAILED
 - The appropriate bid number must be on the outside of the envelope and the envelope sealed. Only one bid per envelope. Please print the name of the bidder, organization, and telephone number on the outside of the bid using the 'Pre-printed Bid Envelope Label' provided in the bid packet. The State assumes no responsibility for lost or misdirected bids.
 - Put the sealed envelope into a larger envelope and mail to the address provided in the "Invitation to Bid". If more than one bid is being submitted, the individual sealed envelopes may be placed in one large envelope and mailed to the appropriate address.

Submission of the bid(s) shall follow the GENERAL PROVISIONS of the bid.

If you have problems downloading or viewing the timber sales files, please contact Andy McBride, State Forest Unit Leader, to get invitations to bid by mail. Please include the sale number(s) along with your name, street address, city, zip code and phone number with your request.

Andy McBride, State Forest Unit Leader
TDA Division of Forestry
P.O. Box 40627
Nashville, TN 37220
(615)837-5550
andy.mcbride@tn.gov



Bid Opening Online Public Access

There will be an online video meeting for each of the timber sale bid openings.

Each session will start an hour before the actual time of the meeting so any technology issues can be worked out. Participants are advised to take advantage of this lead time to test their connection.

There is a unique password and unique link for each of the sessions. This is an extra security measure to dissuade attackers rather than keep out the public.

A link to the TEAMS meeting will be available on the State Forest Timber Sales webpage by noon the day prior to the bid opening - <https://www.tn.gov/agriculture/forests/state-forests/state-forest-timber-sales.html>



Invitation to Bid

BID NO. A-Stonepile-24-01 – Cherokee National Forest
8/22/2024

The Tennessee Division of Forestry offers for sale the timber described in Addendum “A” of the pro forma contract and subject to the “General Provisions” of the Invitation to Bid. Sealed bids will be received until:

Date: September 20th 2023
Time: 9:00 Central Time Zone
Location: Tennessee Department of Agriculture
Division of Forestry
929 West Jackson Street, Suite C
Cookeville, TN 38501

Printed bids will not be accepted at any other location. This bid can be digitally filled out, signed, and submitted through the online bid link here:

<https://www.tn.gov/agriculture/forests/state-forests/state-forest-timber-sales.html>

BID

In compliance with the above Invitation and subject to all General Provisions, the undersigned offers and agrees, to purchase and pay for the timber described in Addendum “A” and with the terms and conditions found in the pro forma contract, within 15 business days after Notice of Acceptance by the Tennessee Division of Forestry. All of the following information should be provided. **Failure to provide the “required” information will result in rejection of the Bid.**

My bid for the timber offered for sale is: \$_____ (required)

By: _____
Signature (required) **Print or Type Name**

Title of Person Signing the Bid _____ Phone # _____

Owner/Organization Name _____(required)

Street Address _____

City, State _____ Zip _____

Tour Dates

Forestry Division personnel will give a tour of the sale areas:
By Appointment

Those interested in a tour or for additional information contact:

Name: Andy McBride

Address: 406 Hogan Road, Nashville, TN 37220

Phone: (931)510-1442

Email: Andy.McBride@tn.gov

GENERAL PROVISIONS

Timber sales shall comply with the procedures outlined in General Services Rule 0690-2-1-.18 (a), Disposal of Forestry Products. The pro forma contract contains the essential terms and conditions of the timber sale contract that is signed by both parties.

The timber sale contract will not be assignable by the purchaser in whole or in part without the written consent of the Division of Forestry.

The departure from the procedures, stipulations or requirements outlined in the Invitation to Bid and General Provisions may be granted only with approval from the Commissioner of the Tennessee Department of Agriculture.

1. PREPARATION OF BIDS:

- (A) Failure to examine any maps and/or instructions will be at bidder's risk.
- (B) Bids must be filled out in **ink or typewritten or digitally submitted**. No erasures permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent to the error and must be initialed in ink by person signing bid.

2. SUBMISSION OF BIDS:

- (A) **Bid Envelope** – For printed paper submissions, the appropriate bid number must be on the outside of the envelope and envelope sealed. **Only one bid per envelope**. Please print the name of the bidder, organization and telephone number on the outside of the bid. The State assumes no responsibility for lost or misdirected bids.
- (B) **Signature - Bids must be signed in ink, if printed, or digitally signed, if digitally submitted. The person signing the Invitation to Bid must be a person authorized to bind the bidder contractually. Unsigned bids will be rejected. Unsigned bids cannot be signed after the bid has been opened, even if the bidder or the bidder's representative is present at**

Invitation to Bid

bid opening. No signatures shall be in pencil. Name of person executing bid and the organization he/she represents should be typewritten or be legibly printed in longhand.

- (C) **Bid Form** - Only bids submitted on bid forms furnished by the Division of Forestry will be considered.
3. **ACCEPTANCE OF BIDS:** The Division of Forestry reserves the right to reject any or all bids. Only bids in sealed envelopes delivered or mailed to the designated location prior to the bid opening time will be considered.
4. **ERROR IN BID:** No bid shall be altered, amended, or withdrawn after the specified time for opening bids. Negligence on the part of the bidder in preparing the bid confers no right for withdrawal of the bid after it has been opened.
5. **AWARD:**
- (A) The highest responsible bidder who accepts the stipulations specified in this Invitation for Bids will be declared the purchaser. The purchaser will be required to sign a timber sale contract at which time he will pay the full purchase price and post a performance bond equaling seven (7) percent of the sale price. Both of these amounts shall be in the form of certified check or a cashier's check (Attention: the interior body of the check must not be perforated or have holes punched into its surface), payable to the Tennessee Department of Agriculture, Division of Forestry.
 - (B) If the highest responsible bidder does not meet the minimum bid determined by the Division of Forestry which is held in confidence in a sealed envelope and opened during the bid opening (the "Minimum Bid"), but is within 95% of the Minimum Bid, the Division of Forestry may negotiate with the highest responsible bidder to accept the Minimum Bid as the purchase price. If the highest responsible bidder accepts the Minimum Bid as the purchase price, then the highest responsible bidder will be declared the purchaser.
 - (C) Should the highest responsible bidder not accept or meet the requirements or stipulations in the Invitation for Bids or General Provisions, including accepting the Minimum Bid as the purchase price, then the next highest responsible bidder will be offered the opportunity to accept the Minimum Bid as the purchase price and accept the stipulations specified in the Invitation for Bids. If the next highest responsible bidder accepts the purchase price and stipulations, the next highest bidders will be declared the purchaser. If the next highest responsible bidder also refuses to accept the Minimum Bid as the purchase price, the no award shall be made and all bids shall be rejected.
 - (D) Should two bids be identical in amount, the winner of a coin toss will determine the highest bidder and next highest bidder.

Invitation to Bid

6. **Required Documents:** Copies of the following documents are required to be provided to the State by the PURCHASER. Copies can be attached to the signed contract, sent to the State's contact person by mail, or provided to the State's contact person no later than the pre-operation meeting. All insurances shall be in good standing and maintained for the term of the contract. Should the status of any of these insurances or documents change, copies should be forwarded to the State's contact person as soon as possible.

- (A) Proof of Worker's Compensation Insurance applicable to Tennessee if PURCHASER and/or logging contractor have employees
- (B) Proof of General Liability Insurance applicable to Tennessee
- (C) Proof of Vehicle Insurance for those vehicles utilized under the terms and conditions of the contract applicable to Tennessee
- (D) Proof of legal alien work status, if applicable
 - United States Passport
 - Unexpired Foreign Passport with I-551 Stamp
 - I-94 Arrival/Departure Record
 - Alien Registration Receipt Card (Resident Alien Card) I-551 (Issued after March 1977)
 - Alien Registration Receipt Card (Resident Alien Card) I-551 (Issued since 1989)
 - Alien Registration Receipt Card (Conditional Resident Alien Card) I-551
 - Temporary Resident Card I-688
 - Employment Authorization Card I-688A
 - Employment Authorization Card I-688B



Pro Forma Contract



A-Stonepile-24-01

This Contract, by and between the State of Tennessee, Department of Agriculture, Division of Forestry ("STATE") and Purchaser's Name ("PURCHASER"), provides for the sale and harvesting of timber on the Cherokee National Forest, as further defined in this Contract. The STATE and the PURCHASER may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The PURCHASER's address is:

Street
City State, Zip Code

The PURCHASER agrees to buy, and the STATE agrees to sell certain timber on Cherokee National Forest ("National Forest") further described in Addendum A and location depicted on maps in Addendum B.

The PURCHASER agrees to harvest said timber and provide other services in strict compliance with all terms set forth in this Contract.

1. **CONTRACT TERM** - This Contract shall be effective on the latter day of execution signed below and extend until December 1, 2024 ("Term"). The date for completion of this Contract or other dates specified therein may be subject to extension(s) at STATE's discretion. The PURCHASER shall complete all services and activities set forth in this Contract within the Term of the Contract.
2. **PAYMENT** - Purchase price shall be paid in full by a certified check or a cashier's check payable to the Tennessee Division of Forestry in the amount of **\$AMOUNT** upon execution of this Contract. The interior body of the check must not be perforated or have holes punched into its surface.
3. **BOND** - A performance bond (7% of purchase price) in the amount of **\$AMOUNT** shall be furnished by the PURCHASER. Bond shall be furnished in the form of a certified check or a cashier's check. The bond is returnable in full to the PURCHASER at the time the terms of this agreement have been fully met. If any conditions of this agreement are not complied with, the value of such damages or violations shall be deducted and the balance, if any, shall be returned to the PURCHASER. The interior body of the check must not be perforated or have holes punched into its surface.

Pro Forma Contract

4. **EXTENSIONS** – The STATE has the sole authority to grant extensions requested in writing by the PURCHASER at a fee of twelve percent (12%) of total sale price per year or a minimum of two hundred dollars (\$200.00) per month. Extensions will be for a minimum of one (1) month. The PURCHASER must request an extension in writing at least thirty (30) days prior to the expiration date of this Contract or the date specified for the applicable activity. An extension of the term of this Contract or other specified date(s) will be affected through an amendment to this Contract.
5. **MODIFICATION AND AMENDMENT** - This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
6. **SPECIAL TERMS AND CONDITIONS** – Special terms and conditions are described and listed in Addendum C. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
7. **PENALTIES** – The PURCHASER shall exercise caution, to prevent damage to trees not designated for harvest. Any undesignated trees cut or damaged shall be paid for at the rate of **\$3,000.00 per thousand board feet, Doyle Rule, for sawtimber and \$100.00 per ton for pulpwood as estimated solely by the STATE. Any undesignated trees cut or damaged in designated retention zones or streamside management zones shall be paid at the rate of \$2,500.00 per occurrence plus the above-mentioned rates for sawtimber and pulpwood for the individual trees cut or damaged as determined and estimated by the STATE. Excepting at places designated by the STATE or other terms and conditions of this Contract, excessive travelling in or through retention zones, streamside management zones, equipment restriction zones or outside the sale area with heavy equipment shall be paid at the rate of \$2,500.00 per occurrence as determined solely by the STATE.**
8. **PROTECTION** – The PURCHASER shall exercise reasonable care to prevent undue damage to the forest, roads, and skid trails and undue risk to public safety. The STATE'S authorized representative shall have authority to temporarily close all or any part of the PURCHASER'S operations to prevent damage and threats to public safety.
 - A. The PURCHASER shall keep all roads, trails, ditch lines, fields, and streams clear of treetops, limbs, and other debris. Forest roads used in connection with this sale shall be kept in passable condition for normal use.
 - B. The PURCHASER shall construct on temporary roads and skid trails erosion control structures such as water bars and broad-based dips to satisfaction of STATE'S authorized representative. All erosion control structures shall be maintained in working condition during the PURCHASER'S operations.
 - C. The PURCHASER shall remove daily all bottles, cans, paper, and other litter from the timber sale area(s).



Pro Forma Contract

- D. The PURCHASER shall not cut timber and/or remove timber from the sale area(s) during recognized state or federal holidays.
- E. The PURCHASER shall prevent and suppress any forest fires in or adjacent to the sale area(s). The PURCHASER shall notify the STATE that a forest fire(s) occurred in or adjacent to the sale area(s). If necessary to prevent death, bodily injury, or damage to the National Forest, the PURCHASER shall alert local law enforcement and emergency responders of any active forest fire in or adjacent to the sale area(s).
- F. The PURCHASER shall disperse logging slash and debris from timber bunching areas to the satisfaction of the STATE.
- G. The PURCHASER shall not allow a third-party to take possession of timber sold by the PURCHASER to a third-party while on federal property.
- H. The PURCHASER shall not bring onto federal property logs or unprocessed forest products not cut on the National Forest, except as permitted by the STATE. State, county, or municipal public roads or rights-of-way passing through the National Forest are not considered part of the National Forest.
- I. The PURCHASER shall not drain or dump grease, hydraulic fluid, oil, fuel, antifreeze, or hazardous material on the National Forest. If a spill or leak occurs, the PURCHASER is responsible for the cleanup and proper disposal of the spilled material, contaminated materials used to contain or clean-up the spill, and contaminated soil. The PURCHASER and/or subcontractor(s) shall have tools and materials on-site to contain and cleanup spills. The PURCHASER shall notify the STATE immediately of any spill of hazardous material that meets or exceeds reporting requirements according to federal and state laws, rules or regulations. Where a more stringent quantity reporting amount does not exist, the PURCHASER shall notify the STATE immediately of any spill greater than five (5) gallons.
9. **IMPROVEMENTS** - The location of all improvements, including sawmill sets, roads, skid trails, bridges, culverts, and timber bunching areas to be made by the PURCHASER in performing this Contract shall be approved by the STATE in advance of location or construction. All structural improvements are to be removed on or before the date of completion of this Contract, unless otherwise agreed upon. If the PURCHASER fails to remove all improvement(s) within the stated period, they shall become the property of the STATE, but that will not relieve the PURCHASER of liability for the cost of their removal and restoration of the site.
10. **LIMITATION OF STATE'S LIABILITY** - The STATE shall have no liability except as specifically provided in this Contract. In no event shall the STATE be liable to the PURCHASER or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract,

Pro Forma Contract

statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise.

11. **HOLD HARMLESS** - The PURCHASER agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the PURCHASER, its employees, or any person acting for or on its or their behalf relating to this Contract. The PURCHASER further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the STATE to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the STATE to give notice shall only relieve the PURCHASER of its obligations under this Section to the extent that the PURCHASER can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the PURCHASER, through its attorneys, the right to represent the STATE in any legal matter, as the right to represent the STATE is governed by Tenn. Code Ann. § 8-6-106.

12. **ASSIGNMENT AND SUBCONTRACTING** – The PURCHASER shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without the prior written approval of the STATE. Notwithstanding any use of approved subcontractors, the PURCHASER shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The STATE reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the PURCHASER'S obligations under this Contract.
13. **CROSSING PRIVATE PROPERTY** – The PURCHASER shall be responsible for securing permission to cross private property as may be convenient or necessary in the performance of this contract.
14. **CONFLICT OF INTEREST** - The PURCHASER warrants that no part of the PURCHASER'S compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the PURCHASER in connection with any work contemplated or performed under this Contract.

The PURCHASER acknowledges, understands, and agrees that this Contract shall be null and void if the PURCHASER is, or within the past six (6) months has been, an employee of the State of Tennessee or if the PURCHASER is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.



Pro Forma Contract

15. **BEST MANAGEMENT PRACTICES** - Where a more strict standard is not required by the terms of this Contract or where this Contract does not provide a standard, the standard of performance will be consistent with the STATE's publication "Best Management Practices (BMP) for Timber Harvesting in Tennessee."
16. **MASTER LOGGER REQUIREMENT** – The PURCHASER's on-site supervisor must have successfully completed Tennessee's Master Logger Program, or an equivalent program in another state. Documentation of successful completion of the Master Logger Program must be provided to the STATE before any timber is cut and/or removed from the sale area(s). This requirement applies to the PURCHASER if the PURCHASER is the logging supervisor or to any logging supervisor that is subcontracted by the PURCHASER. If a subcontractor is to be used, documentation for the successful completion of the Master Logger Program or an equivalent program by the subcontractor's on-site supervisor must be provided to the STATE at the time the subcontractor is submitted for approval. All Master Logger documentation shall be valid for the entire duration of this Contract. It is solely the PURCHASER's responsibility to ensure all Master Logger documentation is valid.
17. **WATER QUALITY ENFORCEMENT ACTIONS** – Neither the PURCHASER, the PURCHASER'S on-site supervisor nor subcontractor's on-site logging supervisor shall be permitted to conduct any logging activities on the National Forest if the individual(s) is subject of an open Notice of Violation (NOV) with the Department of Environment and Conservation, hereinafter referred to as "TDEC", or similar action(s) in another state(s). All logging activities shall cease until any and all NOV's are closed by TDEC or similar authority in another state or permitted to resume by the State Forester.

No PURCHASER, PURCHASER's on-site supervisor nor PURCHASER's subcontracted on-site logging supervisor shall be permitted to conduct logging activities on the National Forest if the individual has received from TDEC a "Stop Work", "Director's" or "Commissioner's" Order under *Tennessee Code Annotated*, Water Control Act, Sections 69-3-100 through 69-3-142, or similar action(s) in another state. Should such Orders be issued to the PURCHASER, on-site supervisor or subcontractor during the contract term, all logging activity shall cease until a qualified on-site supervisor or approved subcontractor replacement can be found.

The PURCHASER shall notify the STATE within twenty-four (24) hours of receiving any water quality enforcement action issued by TDEC or similar authority in another state, excepting weekends and STATE holidays.

18. **STRICT PERFORMANCE** - Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
19. **INDEPENDENT CONTRACTOR** - The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or



Pro Forma Contract

to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.

20. **STATE AND FEDERAL COMPLIANCE** - The PURCHASER shall comply with all State and federal laws and regulations applicable to the PURCHASER in the PURCHASER'S performance of this Contract.
21. **GOVERNING LAW** - This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The PURCHASER acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
22. **COMPLETENESS** - This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
23. **SEVERABILITY** - If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
24. **HEADINGS** - Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
25. **RESIDUAL TIMBER** - Any standing or felled timber remaining on the designated sale area(s) after the term of this contract, shall thereafter be the sole and exclusive property of the United States Forest Service.
26. **STATE FURNISHED PROPERTY** - The PURCHASER shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the STATE for the PURCHASER's use under this Contract. Upon termination of this Contract, all property furnished by the STATE shall be returned to the STATE in the same condition as when received, less ordinary wear and tear. Should the property be destroyed, lost, or stolen, the PURCHASER shall be responsible to the STATE for the fair market value of the property at the time of loss.
27. **RECORDS** - The PURCHASER shall maintain documentation for all charges under this Contract. The books, records, and documents of the PURCHASER, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the STATE, the Comptroller of the Treasury, or their duly



Pro Forma Contract

appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

28. **MONITORING** - The PURCHASER'S activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the STATE, the Comptroller of the Treasury, or their duly appointed representatives.
29. **PROHIBITED ADVERTISING** - The PURCHASER shall not suggest or imply in advertising or marketing materials that PURCHASER'S goods or services are endorsed by the STATE. The restrictions on PURCHASER advertising or marketing materials under this Section shall survive the termination of this Contract.
30. **COMMUNICATIONS AND CONTACTS** - All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first-class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as set forth in Addendum D or any other address provided in writing by a Party.

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt of recipient confirmation as may be required.

31. **INCORPORATION OF ADDITIONAL DOCUMENTS** - Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the PURCHASER'S duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- A. Any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - B. This Contract with any attachments or exhibits (excluding the items listed at subsections C. through E., below), which includes Addendum A, B, C, and D;
 - C. The STATE's solicitation, as may be amended, requesting responses in competition for this Contract;
 - D. Any technical specifications provided to bidders during the bidding process to award this Contract; and
 - E. The PURCHASER'S response seeking this Contract.

32. **TERMINATION FOR CONVENIENCE** - The STATE may terminate this Contract for convenience without cause and for any reason. The STATE shall give the PURCHASER at least five (5) days written notice before the termination date. Should the STATE exercise this provision, the PURCHASER shall be required to compensate the STATE for timber removed

Pro Forma Contract

as of the termination date. In no event shall the STATE be liable to the PURCHASER for compensation for any goods neither requested nor accepted by the STATE or for any services neither requested by the STATE nor satisfactorily performed by the PURCHASER. In no event shall the STATE'S exercise of its right to terminate this Contract for convenience relieve the PURCHASER of any liability to the STATE for any damages or claims arising under this Contract.

33. **TERMINATION FOR CAUSE** - If the PURCHASER fails to properly perform its obligations under this Contract in a timely or proper manner, or if the PURCHASER materially violates any terms of this Contract ("Breach Condition"), the STATE shall have the right to immediately terminate the Contract. Should the STATE exercise this provision, the PURCHASER shall compensate the STATE for any timber removed as of the termination date. The STATE may require the PURCHASER to forfeit any part or all performance bond amounts provided to the STATE at the sole discretion of the STATE. Notwithstanding the above, the PURCHASER shall not be relieved of liability to the STATE for damages sustained by virtue of any Breach Condition and the STATE may seek other remedies allowed at law or in equity for breach of this Contract.
34. **DEBARMENT AND SUSPENSION** - The PURCHASER certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- A. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - B. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - C. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - D. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The PURCHASER shall provide immediate written notice to the STATE if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

Pro Forma Contract

35. **FORCE MAJEURE** - "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting the PURCHASER'S representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. The PURCHASER will promptly notify the STATE of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the STATE within one (1) day of the inception of the delay) that a Force Majeure Event has occurred and shall describe in reasonable detail the nature of the Force Majeure Event.
36. **NONDISCRIMINATION** - The PURCHASER hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the PURCHASER on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The PURCHASER shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
37. **PROHIBITION OF ILLEGAL IMMIGRANTS** - The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the State of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- A. The PURCHASER agrees that the PURCHASER shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.
 - B. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the PURCHASER shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from



Pro Forma Contract

subcontractors shall be maintained by the PURCHASER and made available to STATE officials upon request.

- C. The PURCHASER shall maintain records for all personnel used in the performance of this Contract. PURCHASER's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the STATE.
 - D. The PURCHASER understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - E. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
38. **WARRANTY** - All stumpage offered for sale is sold "Where Is and As Is" without recourse. No representation, warranty (either express or implied), or guaranty is made by the STATE as to the quantity, quality, condition, size or description. Any discrepancy between the STATE'S estimated volume and the volume cut will not affect the validity of the sale or be considered the basis of a claim.
39. **REQUIRED APPROVALS** - The STATE is not bound by this Contract until it is duly approved by the Parties and all appropriate STATE officials in accordance with applicable Tennessee laws and regulations. Approvals shall be evidenced by a signature or electronic approval.



Pro Forma Contract

The Purchaser

Tennessee Department of Agriculture

Type Purchaser's name or organization

Commissioner, Charlie Hatcher, DVM

Date

Owner or Authorized Representative

Forestry Division

State Forester, David Arnold

Date

Date



Forestry

Pro Forma Contract

Addendum A

Description of the Timber Sale Location and Timber being Sold

The Tennessee Department of Agriculture, Division of Forestry offers for sale certain marked timber in Units 11 and 12 located on:
 National Forest – Cherokee
 Unit - Stonepile
 County - Polk
 Nearest Town/City – Ducktown
 Map Reference – Addendum B

Forest	Unit Number	Acres	Boundary Color
Cherokee/Stonepile	11	32	3 ORANGE slashes
Cherokee/Stonepile	12	3.6	3 ORANGE slashes
Total		35.6	

Although the Division of Forestry does not guarantee the accuracy of these figures, the species and estimated tonnage are as follows:

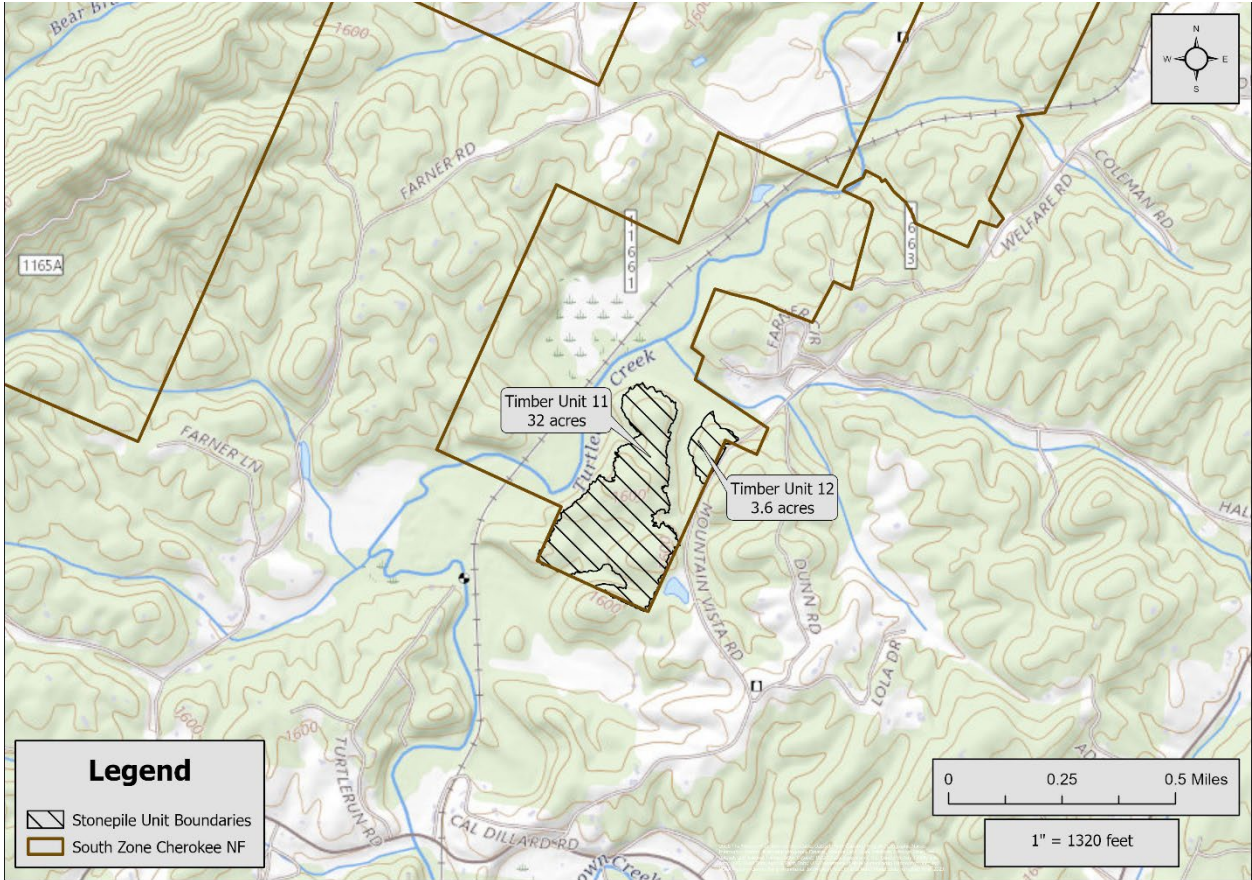
Species	Estimated Sawtimber (tons)	Estimated Pulpwood (tons)
Eastern White Pine	1620	
Southern Yellow Pine	655.4	
Low Grade Hdwd and Oak	454.8	
Virginia Pine	143.1	
Yellow-poplar	102.1	
Hardwood Pulpwood		154
Pine Pulpwood		350
Total	2,975.4	504



Forestry

Pro Forma Contract

Addendum B Maps



Cherokee National Forest - Stonepile Sale Units 11 and 12





Forestry

Pro Forma Contract

Addendum C

Special Terms and Conditions

- A. The PURCHASER shall notify the STATE in writing upon termination of cutting and shall request in writing return of the performance bond subject to final inspection of the sale area(s) by the STATE and any performance bond deductions for damage or penalties.
- B. The PURCHASER shall thoroughly clean all equipment entering the site prior to first entry to the sale area(s) or if equipment is used at another location during the course of this contract, to prevent contamination by invasive species.
- C. The PURCHASER shall revegetate all skids trails, log landings, and cut banks. Cut banks shall be sloped to accommodate natural revegetation. All seeding mixtures, rates, and seeding dates shall be pre-approved by the STATE's representative and follow the STATE's publication "Best Management Practices (BMP) for Timber Harvesting in Tennessee."
- D. The PURCHASER shall purchase and spread at least 100 tons of #4 aggregate gravel on haul roads/ log landings used in conjunction with this sale. Gravel shall be spread on haul roads at locations designated by the STATE. Proof of gravel purchase must be provided to the STATE before logging begins. All haul roads, landings and skid trails shall be maintained by the PURCHASER under STATE'S supervision. Log landings and skid trails shall be constructed by the PURCHASER at agreed upon locations with the STATE.
- E. The PURCHASER shall cut and remove timber from the sale area only during business hours (7:00 am to 5:30 pm) Monday through Saturday, excluding recognized state or federal holidays, or at other times designated or permitted by the STATE.
- F. The PURCHASER shall start logging operations within fourteen (14) calendar days of receipt of the executed contract or at an agreed upon time with the STATE's representative.
- G. The PURCHASER shall cut and remove all merchantable timber in the sale area(s) designated and/or as directed by the STATE and individually marked trees that may be outside the designated sale area as directed by the STATE. All trees with an **ORANGE** paint band at eye level are leave trees and are not to be harvested. Sale areas are delineated by paint as provided for in Appendix A and individually marked trees by three slashes of **ORANGE** paint. The PURCHASER shall consult with the STATE'S forester should any question about a sale area boundary location or trees to be cut along a sale area boundary.
- H. Site preparation entails a slash down of all live stems of woody vegetation (trees and shrubs) that are greater than 1.0 inches and less than 6.0 inches in diameter at breast height (dbh). Retain (do not cut) hard/soft mast producing trees. Stump heights shall be a maximum of 6 inches on pulpwood and 12 inches on sawtimber.

Pro Forma Contract

- I. The PURCHASER shall consult with and act only on the approval and instruction of the STATE on the location and construction of any additional logging roads, timber bunching areas, and loading areas.
- J. Delimiting devices shall be used for pine species only, but such devices shall be located away from the landing(s) at points designated by the STATE's forester. Hardwood species shall be topped and delimited where the tree falls. Skidding of the tree-length boles (merchantable bole minus top and limbs) is acceptable for all species. Trees felled or falling outside the sale area shall be pulled back into the sale area and non-merchantable tops and limbs severed in the immediate sale area, except as permitted or directed by the STATE.
- K. The PURCHASER shall not allow excessive volumes of cut-off logs, tops and limbs to accumulate at a landing(s) and delimiting devices. Cut-off logs, tops and limbs that for whatever reason accumulates at a landing(s) and delimiting devices shall be scattered evenly back onto the sale area each day in a manner and to the degree that is acceptable to the STATE.
- L. The PURCHASER shall keep ditch lines free from treetops, limbs, and other debris.
- M. The STATE shall have the authority to limit the size and/or type of trucks or logging equipment used by the PURCHASER on the sale area based on road conditions leading to the sale area and logging conditions at the sale area.
- N. Within each sale area, logging shall be carried out in sections at the direction of the STATE. In each section, trees shall be cut and removed, with the exception and requirements mentioned above, before proceeding to the next section.
- O. The PURCHASER shall attend a pre-operational meeting with the STATE before any timber is cut and removed from the National Forest. If the sale area is divided into multiple sections or compartments, the PURCHASER shall attend a pre-operational meeting with the STATE for each section or compartment before any timber is cut or removed.
- P. A "logging crew" as used in this contract is defined as a group of people employed by the PURCHASER working together with at least one loader, plus one skidder who will operate on a designated log deck independently from other crews to cut and remove timber from a single sale area; or any independent subcontractor and its employees hired by the PURCHASER with at least one loader, plus one skidder who will operate on a designated log deck independently from other crews to cut and remove timber from a single sale area under this contract.
- Q. The PURCHASER shall exercise caution and utmost care to prevent damage to trees not designated for harvest. Damage shall be determined and assessed at the sole discretion of the STATE and/or according to Section 7 (Penalties) of the contract.



Pro Forma Contract

- R. The STATE may suspend or cancel harvesting operations due to a court order to comply with the National Environmental Policy Act (NEPA) or other legal sanctions. The STATE reserves the right to modify, terminate, or suspend the contract to prevent environmental degradation or resource damage, including, but not limited to, harm to habitat, plants, animals, cultural resources, or cave resources. Modification, termination, or suspension may incur to ensure consistency with land and resource management plans or other documents prepared pursuant NEPA, or to conduct environmental analysis, including but not limited to, engaging in consultation pursuant to the Endangered Species Act of 1973.



Forestry

Pro Forma Contract

Addendum D

Communications and Contacts

The State:

Andy McBride, State Forest Unit Leader
Ellington Agricultural Center, Bruer Building
406 Hogan Road
Nashville, TN 37220
(615)837-5550
(931)510-1442
Andy.mcbride@tn.gov

The PURCHASER:

- Name
- Address
- Phone
- Fax



Envelope Label

Pre-printed Bid Envelope Label

Cut the label along the dashed lines and affix it to the front of the sealed bid envelope with clear tape.

Cherokee National Forest - A-Stonepile-24-01

Bidder's Name _____

Organization _____

Telephone _____