Note to § 26.104: Population-based construction requirements contained in this section shall be based on the 1990 census.

Subpart E—Competitive Bidding **Procedures for GWCS**

§ 26.201 GWCS subject to competitive bidding.

Mutually exclusive initial applications to provide GWCS service are subject to competitive bidding procedures. The general competitive bidding procedures found in 47 CFR Part 1, Subpart Q, will apply unless otherwise provided in this part.

§ 26.202 Competitive bidding design for **GWCS** licensing.

- (a) The Commission will employ the following competitive bidding designs when choosing from among mutually exclusive initial applications to provide GWCS service:
- (1) Simultaneous multiple round actions
 - (2) Sequential oral auctions
- (b) The Commission may design and test alternative procedures. The Commission will announce by Public Notice before each auction the competitive bidding design to be employed in a particular auction.
- (c) The Commission may use single combined auctions, which combine bidding for two or more substitutable licenses and award licenses to the highest bidders until the available licenses are exhausted. This technique may be used in conjunction with any type of auction.

§ 26.203 Competitive bidding mechanisms.

- (a) Sequencing. The Commission will establish and may vary the sequence in which GWCS licenses will be auctioned.
- (b) Reservation price. The Commission may establish a reservation price, either disclosed or undisclosed, below which a license subject to auction will not be awarded.
- (c) Minimum bid increments. The Commission may, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms. The Commission may also establish by Public Notice a suggested opening bid or a minimum opening bid on each license.
- (d) Stopping rules. The Commission may establish stopping rules before or during multiple round auctions in order to terminate an auction within a reasonable time.
- (e) Activity rules. The Commission may establish activity rules which require a minimum amount of bidding activity. In the event that the Commission establishes an activity rule in connection with a simultaneous

multiple round auction, each bidder will be entitled to request and will be automatically granted one activity rule waiver during each stage of an auction, or one automatic waiver during a specified number of bidding rounds. The Commission may change by Public Notice the number and frequency of such automatic activity rule waivers for a specific auction.

(f) Bidder identification during auctions. The Commission may choose, on an auction-by-auction basis, to release the identity of the bidders associated with bidder identification numbers. The Commission will announce by Public Notice before each auction whether bidder identities will be revealed.

(g) Nationwide bidders. Bidders seeking to aggregate EA-based GWCS licenses into nationwide licenses are required to declare the number of nationwide aggregations for which they will bid and to be active in every round of bidding on sufficient licenses to create the number of declared aggregations.

§ 26.204 Withdrawal, default and disqualification penalties.

(a) When the Commission conducts a simultaneous multiple round auction pursuant to § 26.202(a)(1), the Commission will impose penalties on bidders who withdraw high bids during the course of an auction, or who default on payments due after an auction closes or who are disqualified.

(1) Bid withdrawal prior to close of auction. A bidder who withdraws a high bid during the course of an auction will be subject to a penalty equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal penalty would be assessed if the subsequent winning bid exceeds the withdrawn bid. This penalty amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission. The withdrawal penalty for a nationwide bidder for each aggregation is limited to 5 percent of the aggregate withdrawn bids. The withdrawal penalty for a nationwide bidder is calculated between the sum of the withdrawn bids and the sum of the subsequent high bids on the withdrawn licenses.

(2) Default or disqualification after close of auction. If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the penalty in paragraph (a)(1) of this section plus an additional penalty equal to three (3)

percent of the subsequent winning bid. If the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent penalty will be calculated based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission.

- (b) When the Commission conducts sequential oral auctions, the Commission may modify the penalties to be paid in the event of bid withdrawal, default disqualification; provided, however, that such penalties shall not exceed the penalties specified above.
- (c) In the case of single round bidding for GWCS licenses:
- (1) If a bid is withdrawn before the Commission releases the initial Public Notice announcing the winning bidder(s), no bid withdrawal penalty will be assessed.
- (2) If a bid is withdrawn after the Commission releases the initial Public Notice announcing the winning bidder(s), the bid withdrawal penalty will be equal to the difference between the high bid amount and the amount of the next highest valid bid. A bid will be considered valid for this purpose if the bidder has not already been designated the winning bidder on more licenses than it is permitted to be awarded. Losing bidders will only be subject to this bid withdrawal penalty for a period of 30 days after the Commission releases the initial Public Notice announcing the winning bidders.
- (d) In the case of oral sequential bidding for GWCS licenses:
- (1) If a bid is withdrawn before the Commission has declared the bidding to be closed for the license bid on, no bid withdrawal penalty will be assessed.
- (2) If a bid is withdrawn after the Commission has declared the bidding to be closed for the license bid on, the bid withdrawal penalty of § 1.2104(g) of this chapter and paragraphs (a)(1) and (a)(2) of this section will apply.

§ 26.205 Bidding application (FCC) Form 175 and 175-S Short-Form).

All applicants for initial provision of GWCS service must submit applications on FCC Forms 175 and 175–S pursuant to the procedures set forth in § 1.2105 of this chapter. The Commission will issue a Public Notice announcing the date of a GWCS auction, the licenses which are to be auctioned, and the date on or before which applicants intending to participate in an upcoming GWCS auction must file their applications in order to be eligible for that auction. The