

DOCUMENT RESUME

02992 - [A2013097]

[Claim for Additional Payment under Timber Sales Contract].
B-188304. July 14, 1977. 3 pp.

Decision re: Zip-O Log Mills, Inc.; by Paul G. Deabling (for
Elmer B. Staats, Comptroller General).

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law II,
Budget Function: General Government: Other General Government
(806).

Organization Concerned: Forest Service; International Paper Co.
Authority: 16 U.S.C. 535(2) (Supp. V).

Contractor submitted a claim for additional payment for excavation and construction of a landing in connection with road construction under a timber sales contract. Since the contractor was required to perform excavation work which was not clearly provided for in the timber sales contract, the additional payment could be recovered in accordance with the "Design Change" clause of the contract. (Author/SC)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20540

FILE: B-188304

DATE: July 14, 1977

MATTER OF: Zip-O Log Mills, Inc.

DIGEST:

Contractor who was required to perform excavation work which was not clearly provided for in timber sales contract may recover additional payment in accordance with "Design Change" clause of contract.

Zip-O Log Mills, Inc. (Zip-O), has submitted a claim for \$33,607.12, as an additional credit for excavation and construction of a landing in connection with road construction under a timber sales contract (Coon 75 Timber Sale Contract No. 03660-4). The sale area includes approximately 279 acres in the Siuslaw National Forest, Douglas County, Oregon.

The contract, executed December 30, 1974, with a termination date of March 31, 1979, was between the Department of Agriculture's Forest Service and the International Paper Company (International), high bidder on the timber sale. Zip-O, with Forest Service approval, was assigned the contract on May 6, 1976.

Under standard timber sale contract provisions, pursuant to 16 U.S.C. 535(2) (Supp. V 1975), purchasers may be required to construct or reconstruct roads and related facilities necessary for removal of timber from sale areas. They thereby earn credit to be applied to amounts due for cutting. A maximum credit limit, based upon the Forest Service's estimate of work required, is specified in each contract.

In this case, the Forest Service intended the timber purchaser to reconstruct the upper half of an access road and to construct a landing on that portion of the road. (A landing is an area where logs are stacked and stored prior to being trucked out; it is needed to prevent soil erosion and watershed damage.) The Forest Service estimated that this particular landing, built in the desired location

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and according to specifications, would require 4,900 cubic yards of excavation. However, as the Forest Service acknowledges, these requirements were not clearly expressed in the contract documents.

Information on the road construction was contained in a prospectus, an area map, and plans for the road which were available to bidders before bid opening date. All these showed reconstruction of the upper half of the road. The timber sale contract differed from the prospectus in that it contained a Table of Estimated Costs which called for reconstruction of the lower half of the road. The Forest Service originally had considered reconstruction of the entire road, but an economic survey determined that only the upper half should be done; the lower half incorrectly was inserted in the contract table. Moreover, the estimated costs set forth in the table did not include an estimate for the landing excavation work. Both the prospectus and the contract document specified a purchaser credit limit of \$25,670; landing excavation costs were not included in calculating this amount. The 4,900 cubic yards of excavation appeared only as a notation on Sheet 3, Bar graph, of the road construction plans.

After the assignment, Zip-O discovered that the Forest Service had staked the upper half of the road, rather than the lower half designated in the contract table. All parties agreed that Zip-O should reconstruct the upper half of the road, but disagreed about the landing. The Forest Service initially argued that it must be constructed because it had been shown in the bar graph, but informed Zip-O that because the contract contained no provision for adjustment due to error, no additional purchaser credit could be given for excavation. Because it needed timber from the sale, Zip-O began reconstruction, including the landing, but indicated that it expected additional compensation.

Zip-O seeks additional compensation due to either a mistake or an accidental misrepresentation by the Government. It contends that in computing the purchaser credit the Forest Service neglected to include any allowance for the excavation work. Zip-O claims \$25,994.60, its subcontractor's cost for landing excavation, plus \$2,729.43 overhead and \$4,883.09 profit, in addition to the purchaser credit specified in the contract. The Forest Service states that if Zip-O is entitled to any additional compensation, it should be limited to \$14,460, which Forest Service worksheets show would have been allowed if excavation costs had been estimated and

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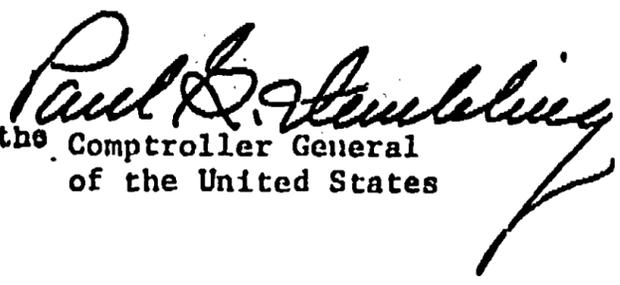
included in the prospectus and the contract. It further states that neither overhead nor profit is properly included in purchaser credit.

While Zip-0 claims that excavation costs were mistakenly excluded from purchaser credit, we believe the mistake was more fundamental. We agree with the Forest Service that the contract in this case did not clearly require construction of a landing. The single, inconspicuous reference to the landing in the bar graph did not put the purchaser on actual notice, and according to the Forest Service, there was nothing about the upper portion of the road, prior to staking, that would have provided constructive notice if the purchaser had made a field survey before bidding. We therefore find that Zip-0 may be paid an additional amount.

In our view the excavation work should be treated as a design change, which is defined in section CT5.254 of the contract as a "change of other than a minor nature in location; road cross section; quantities of unsuitable or excess material to be removed; bituminous material; or structures, other than culverts, described in Drawings and specifications." Provided the Forest Service and the purchaser agree in writing upon the changes, the section permits increases in Forest Service cost estimates. The language of this section is broad enough, we believe, to cover additions such as the landing in question as well as changes in designs specified in the contract.

Therefore, the claim may be paid in an amount administratively determined in accordance with section CT5.254. If Zip-0, seeking \$33,607.12, and the Forest Service, arguing that its cost estimate would have increased only \$14,460 for landing construction and excavation, are unable to agree, the matter is then for resolution under the Disputes clause of the contract.

Finally, the Forest Service asks whether the contracting officer could have settled this matter when it first arose. Since we believe that the claim represents a design change, it could have been settled by the contracting officer.


For the Comptroller General
of the United States