

DOCUMENT RESUME

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[Claim for Additional Amount for Work Performed because of Erroneous Estimate]. B-193399. December 5, 1978. 3 pp.

Decision re: Sierra Pacific Industries; by Robert F. Keller, Deputy Comptroller General.

Contact: Office of the General Counsel: Procurement Law I.

Organization Concerned: Forest Service.

Authority: B-188785 (1977). B-189304 (1977). B-189431 (1977).

A company claimed additional money for clearing work done in connection with road construction, claiming that it was misled as to the acreage to be cleared, and requested that its contract be reformed by increasing the purchaser credit limit. Although the agency erred in its clearing estimate, reformation of purchaser road credit would not be proper since the sales prospectus contained an admonition as to the reliability of estimates, and information was provided from which the correct acreage could be calculated. Clearing the acreage beyond the estimated quantity did not provide an additional benefit to the Government; therefore, recovery of additional costs based on quantum meruit was not proper. (HTW)

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-193399

DATE: December 5, 1978

MATTER OF: Sierra Pacific Industries

DIGEST:

1. Reformation of purchaser's credit is not proper even though agency made error in clearing estimate since sales prospectus contained admonition as to reliability of estimates and road drawings and specifications contained information from which correct amount of clearing could be calculated.
2. Since contractor assumed risk of relying on Government estimated road clearing under timber sale contract, clearing of acreage beyond estimated quantity is not additional benefit to Government; therefore, recovery of additional clearing costs based on quantum meruit is not proper.

By letter dated November 1, 1978, the Forest Service of the Department of Agriculture forwarded the claim of Sierra Pacific Industries (Sierra), the purchaser of the Cooks Timber Sale on the Plumas National Forest in California under Contract No. 017753, dated June 11, 1974. Sierra has submitted a claim for \$13,804 for clearing work done in building a road to the sale site.

Under the terms of Contract Section B5.1, Sierra was to construct Specified Road No. 28NO2. Contract Section B5.2 provided that Sierra would be given Purchaser Credit for construction of this road. Purchaser Credit is limited by the terms of Contract Section B4.21. Prior to sale, the Forest Service surveyed and designed Specified Road No. 28NO2. Based on various construction phases, such as acres of clearing, the estimated costs and Purchaser Credit Limit were computed. The Cooks Timber Sale Contract was advertised with a Purchaser Credit Limit of \$127,902 for Specified Road No. 28NO2, of which \$6,960 was for clearing 6 acres as shown on the road design, page A-10. However, this clearing

figure was in error, and when Sierra actually performed the clearing on road 28NO2, it was discovered that the clearing required was 17.9 acres rather than 6 acres. Consequently, on January 26, 1978, Sierra requested that Purchaser Credit Limit for road 28NO2 be increased by \$13,804 to cover the cost of the clearing actually performed.

Sierra claims that it is entitled to the additional money because the Forest Service either willfully or accidentally misled Sierra and that it reasonably relied on the drawings stating that there were 6 acres to clear. Sierra therefore wants the contract reformed to show the correct clearing figures and a corrected credit amount on page A-10 to reflect the additional work.

The prospectus for the Cooks Timber Sale contains the following admonition under item 7:

* * *
 "7. SPECIFIED ROADS. * * *
 CONSTRUCTION ESTIMATES ARE NOT
 GUARANTEED AND INFORMATION CON-
 TAINED HEREIN, TOGETHER WITH RE-
 LATED MATERIAL, IS MADE AVAILABLE
 WITH THE UNDERSTANDING THAT COSTS
 OR QUANTITIES SHOWN ARE ESTIMATES.
 * * *"

While we have held that a contract may be modified even though the purchaser is expected to visit the sale area, as the solicitation suggested here, and did not (L. Z. Hizer, B-188785, May 23, 1977, 77-1 CPD 357), this remedy is available when the purchaser reasonably relied on a Forest Service estimate which purported to be accurate. In this case, the Forest Service estimates did not purport to be accurate, and, as discussed below, information was included in the prospectus so that prospective purchasers could check the accuracy of the estimates.

The complete construction plans for road 28NO2 were included with the prospectus. The area that would have to be cleared for construction of this road was marked in dotted lines along the roadway on page 13 of the road specifications. While the course and width of the clearance area vary due to the topography of the land, on the average it is about 50 feet wide for the length of the roadway. Multiplying 50 times 14,308.80 feet

(length in feet of the roadway) and dividing this by 43,560 (square feet per acre) gives a figure of 16.42 acres for clearing. Since this figure could easily be determined from these specifications, Sierra assumed the risk of relying on the 6 acre figure stated on page 2 of the drawings. We also note that Sierra has purchased many timber sales in the past and was therefore experienced at reading the road specifications provided with the prospectus.

The other argument Sierra offers is that it should be paid for the extra clearing on the basis of quantum meruit. It claims that the clearing work had to be done if the road was to be built. Sierra argues that since the Government received the benefit of clearing additional acres, it should pay for the value of the work done. We have held that recovery based on quantum meruit is proper where work was done without the benefit of a contract, the Government received a benefit, and the proper contracting officer ratified the work done. Moore's Auto Body & Paint, Inc., B-189304, August 2, 1977, 77-2 CPD 72; Potter Instrument Company, B-189431, July 18, 1977, 77-2 CPD 35. However, in this case, Sierra did not provide a benefit to the Government that it was not otherwise entitled to under the contract since the drawings and specifications for road 28N02 made it clear that more than 6 acres would have to be cleared. The Government contracted for a road built to those drawings and specifications and did not receive any additional benefit from the clearing work done in accordance with the specifications.

Accordingly, the claim is denied.


Deputy Comptroller General
of the United States