



**The Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

**Matter of:** Department of Agriculture, Forest Service--  
Request for Advance Decision  
**File:** B-224730  
**Date:** March 31, 1987

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## DIGEST

Where prices in timber sale contract under which purchaser is credited, against bid price, for cost of building roads to reach the timber, are adjusted downward pursuant to statute to point where no such credits are available, contract may be modified to provide for government contribution of funds to offset road construction costs, since contribution would have been made if such lower rates had been bid initially.

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## DECISION

The United States Department of Agriculture, Forest Service, has requested an advance decision on the propriety of modifying the timber sales contracts of Mitkof Lumber Company (the Granite sale) and Reid Timber, Inc. (the Suemez sale), to enable the firms to recover a portion of the road construction costs incurred during contract performance. Both sales involve the harvesting of timber in the Tongass National Forest, Alaska. We conclude that the contracts may be modified.

Under these timber contracts, the contractor agrees to pay for timber partly in cash and partly in the form of purchaser credits. The purchaser credits are earned by the contractor when it builds the roads that permit it access to the timber. Each species of timber covered by a contract has a specified base rate, which the contractor pays in cash. Any additional money owed by the contractor for removing timber (the "bid premium") is offset against the contractor's road construction costs, through the purchaser credits. For example, in the case of the Suemez timber sale, Reid bid \$250 per thousand board feet (MBF) for sitka spruce utility logs, for which the base rate was \$10 per MBF. Thus, Reid was required to pay cash of \$10, and the balance of \$240 per MBF was to be credited to Reid against its road construction

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costs. The contract provided that the total of these credits could not exceed \$5,038,743, the total estimated road construction cost.<sup>1/</sup>

The sales prospectus for each of these contracts contained an additional provision, which gives rise to the Forest Service's request. As explained by the Forest Service, when these sales were being prepared for bidding the agency estimated that the value of the timber in both sales would not be sufficient to offset the contractors' road construction costs. The sales prospectuses therefore provided that if the bid price was not high enough to offset the cost of road construction, the agency would provide the contractor with contributed funds, up to a specified amount, to help make up the difference. The provision in the Granite sales prospectus stated:

"It is estimated that there will be \$4,326,157.00 insufficient value of timber at advertised [i.e., the specified base] rates to permit purchaser to apply the full amount of purchaser credit. If an insufficient value of timber is still indicated after including the bid premium [if any] following sale award Forest Service shall offset the deficit in whole or in part by providing contributed funds. The offset may be in the form of materials needed in construction of specified roads in the sale and/or cash. The maximum value of cash and/or materials that can be provided to offset is \$2,278,438.00. The amount of contribution to be furnished by the Forest Service will be decreased by an amount equal to the bid premium."

Since both Mitkof and Reid quoted prices in excess of the estimated values (prices that were high enough to offset their respective road construction costs), neither contract included the prospectus provision about contributed funds.

After the award of these contracts in 1981, the price of timber fell drastically. As a result, in 1984 Congress enacted the Federal Timber Contract Payment Modification Act (FTCPMA), 16 U.S.C. § 619(b) (Supp. III 1985), to provide for emergency timber rate redetermination for companies holding short-term contracts like these. Section 4 of the act allows contractors like Mitkof and Reid to apply for retroactive

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<sup>1/</sup> Any remaining amount cannot be credited, and therefore is paid in cash along with the base rate payment.

rate redeterminations, and further provides that in making the redeterminations the government "may modify existing contract terms" to provide rates that allow the contractors to be competitive with timber purchasers holding long-term contracts, who themselves were afforded other terms of relief.

Reid applied for and received an emergency rate redetermination by contract modification on September 10, 1985. As a result, Reid's new timber rates are much lower than the original advertised rates and Reid's bid, as follows:

<u>Species and product</u>	<u>Advertised Rate*</u>	<u>Reid's Bids*</u>	<u>Redetermined Rate*</u>
Sitka spruce sawlogs	\$10.00	\$250.00	\$3.00
Sitka spruce utility logs	10.00	250.00	1.00
Hemlock sawlogs	6.00	60.25	1.00
Hemlock utility logs	6.00	60.25	1.00
Western Red cedar logs	1.00	1.00	1.00
Alaska-cedar logs	10.00	10.00	3.00

\*per MBF

The Forest Service reports that Mitkof's request for an emergency rate redetermination on the Granite sale has not yet been finalized.

The Forest Service points out that with the reduction in rates and the consequent elimination of the bid premium, the timber companies do not have purchaser credits to offset road construction costs, and the agency therefore wants to give the contractors contributed funds for the same reason contemplated when the sales were advertised. In the Forest Service's view, coupling rate redetermination with the payment of contributed funds would be consistent with the remedial purpose of the 1984 act, even though the act specifically mentions only rate redetermination.

We agree with the Forest Service's view. As the agency points out, the result of retroactive rate determination is that there are no purchaser credits available at all to these contractors to offset the estimated costs of road construction under the contracts. If the redetermined rates had been bid originally, contributed funds would have been available to the contractors, that is, based on these rates the record shows that the government was willing, in 1981, to contribute up to \$1,365,000 for road construction to the Suemez sale and up to \$2,278,438 for road construction in the Granite sale. Since the condition for application of the contributed funds provision has arisen at this time based on the 1984 statute's

provision for emergency rate redetermination, we think it only logical to read the statute as further contemplating modification of the contracts too, as if the redetermined rates initially were bid by the contractors.

Accordingly, we concur in the Forest Service's proposal to modify the Mitkof and Reid contracts to provide for contributed funds.

*for*   
Comptroller General  
of the United States