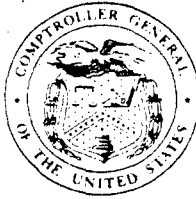


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**DECISION**



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

FILE: B-201138

DATE: February 23, 1981

MATTER OF: Forest Service--Request for Advance Decision

**DIGEST:**

Canceled contract may not be reinstated where agency lacks reasonable assurance of obtaining lowest possible price by reinstating contract rather than competitively procuring its requirements.

[The Director of Administrative Services, Forest Service, Department of Agriculture, has forwarded to our Office a request for an advance decision as to the propriety of reinstating a canceled contract and amending its terms to compensate the contractor for escalation in labor and material costs since the cancellation.] For the reasons stated below, the contract may not be reinstated.

On July 5, 1979, the Forest Service awarded a fixed-price contract of \$1,299,774.57 to Norm Lange for the construction of timber sale roads in Gifford Pinchot National Forest, Washington. A notice to proceed was issued on July 30, 1979 and work progressed through November 20, 1979, when winter conditions forced suspension of the work. On May 18, 1980, prior to resumption of work by the contractor during the following construction season, Mt. St. Helens, a volcano west of the project site, erupted with major ash fallout occurring in its vicinity.

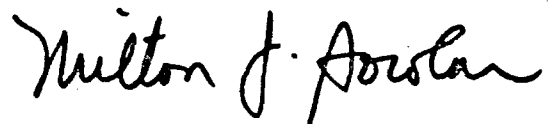
[For safety reasons, the area surrounding Mt. St. Helens, including the project site, was closed to all entry by executive order of the Governor of the State of Washington and by the Forest Supervisor, Gifford Pinchot National Forest. Construction on the project was therefore completely halted and on June 25, 1980, the contracting officer canceled the contract because of "impossibility to perform."] Subsequently, a meeting

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was held between the contracting officer and representatives of the contractor in which payment for work performed in 1979 was discussed. The parties agreed that an additional \$28,124.42 was due and owing the contractor for a total of \$297,202.90 for work completed in 1979. On July 9, 1980, the contracting officer sent a "cancellation of contract document" to the contractor with a final payment estimate. While signing the purported final payment, the contractor never signed the cancellation document.

(On July 30, 1980, the contractor sent a letter urging that the cancellation be set aside and that the work be placed in a suspended status. Further, the contractor specifically reserved claims for escalation in labor and material costs should the contract be reinstated. No construction took place in the 1980 construction season. On September 11, 1980 the project site was removed from the no-entry area and the Forest Service would now like to reinstate the contract for completion of the project in 1981.)

We will assume, without deciding, that the purported final payment did not entirely extinguish all rights and obligations of both parties to the contract, thereby precluding reinstatement under all circumstances. Nevertheless, it is undisputed that approximately one year will have elapsed between the cancellation notice and the beginning of work in the 1981 construction season. With the passage of such a substantial period of time, we fail to see how the Forest Service can reasonably assure itself of obtaining the lowest possible price by reinstating the contract with an escalation provision with the incumbent contractor rather than competitively procuring its requirements. Accordingly, the remaining requirements for the timber sale roads should be competitively procured.)



For the Comptroller General  
of the United States