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DECISION



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

FILE: B-217595

DATE: April 2, 1986

MATTER OF: Refunds of Interest Erroneously Charged by Forest Service

DIGEST: Forest Service interpreted provision in timber sale contract as requiring full month's interest on payments late by only a portion of a month. Based on challenge by one contractor, Agriculture Board of Contract Appeals held that Forest Service improperly construed contract and that interest should have been charged only for actual number of days payments were late. For all other timber sale contracts governed by the Board's decision, Forest Service may refund the overcharges without requiring formal submission of claims. Since interest collections had been deposited in Treasury as miscellaneous receipts, refunds may be charged to permanent appropriation established by 31 U.S.C. § 1322(b)(2). Contractors who file claims under Contract Disputes Act are entitled to interest on refunds from date of filing, payable from current Forest Service appropriations for administration of timber sale contracts.

The Secretary of Agriculture requests our opinion on how the Forest Service should implement a decision of the Agriculture Board of Contract Appeals (Board) holding that the Forest Service had been overcharging contractors for interest due on late payments under its standard timber sale contract. The basic question is the proper source of funds for refunds flowing from the Board's decision.

BACKGROUND

The Forest Service, Department of Agriculture, enters into timber sale contracts which authorize contractors to go upon Government land and cut timber. The contractor is required to pay the Forest Service for the timber by the date specified in the standard contract used for all timber sales. If the contractor fails to pay on time, it must pay interest.

For timber sale contracts written between June 1981 and November 1983, the Department of Agriculture interpreted the

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provision for interest as requiring a contractor to pay a full month's interest if payment was late by only a fraction of a month, rather than prorating the interest for the actual number of days the payment was late.^{1/} One contractor, Puget Sound Plywood, Inc., disputed this interpretation. Eventually, the dispute was heard by the Board of Contract Appeals, United States Department of Agriculture, in case AGBCA No. 84-128-1.

The Board ruled that the contract provision was ambiguous and that the ambiguity would be held against the drafter of the contract, the Department of Agriculture. As the Board construed the contract, Puget Sound Plywood was required to pay interest only for the days it was actually late with its contract payment. Consequently, Puget Sound was entitled to a refund because it had been charged 30 days interest when making payment only 1 day after the due date.

According to the Department of Agriculture, there are potentially 10,000 to 12,000 other instances in which contractors would be entitled to interest refunds under the rationale of the Puget Sound decision. These potential claims could total as much as \$3.5 million. The Forest Service is concerned with how to pay these potential claims.

^{1/} The pertinent contract provision, which has since been revised, reads as follows:

"C4.4 - Payments Not received. (6/81) * * *

"Failure to pay amounts due when payments are guaranteed by a payment guarantee shall be considered a breach under B9.3, and the 30 calendar-day notice period prescribed therein shall begin to run as of the end of business of the 15th calendar day allowed for payment. Such payments received after the due date are subject to an interest charge at the current rate prescribed by the U.S. Treasury Department (TFRM 6-8020-20), as published in the Federal Register, for each 30-day period or portion thereof. Payments made by wire will be accepted and will be credited on the date received by the designated collection officer."

DISCUSSION

The Forest Service is concerned that these refunds, if they must be paid from Forest Service appropriations, will impose an inequitable burden on the agency's operating funds, especially since Forest Service appropriations received no benefit from the original collections. We agree. In determining the proper source of funds for refunding amounts previously collected, the initial point of inquiry is how those collections were credited when they were received. As a general proposition, agency operating funds should not bear the burden of refunding collections that were deposited in the general fund of the Treasury. Here, the Forest Service states that the interest collections were deposited in the general fund of the Treasury as miscellaneous receipts, to the credit of account 121499 (Miscellaneous Interest Collections Not Otherwise Classified). This action was in accordance with 31 U.S.C. § 3302(b) and the Treasury Fiscal Requirements Manual, vol. I, § 6-8020.20e.

There is a statute, 31 U.S.C. § 1322(b)(2), which establishes a permanent, indefinite appropriation for the refunding of "moneys erroneously received and covered" where the refunds are "not properly chargeable to another appropriation."^{2/} Given that the Government will not seek further review of the Board's decision in the Puget Sound case, it may be said that the excess interest collections in Puget Sound and similar timber sale contracts were "erroneously received and covered."

Since, as noted above, Forest Service operating appropriations did not benefit from the interest collections in question, they should not be required to bear the burden of the refunds. Therefore, and since we are aware of no other available appropriation, we conclude that the refunds are properly chargeable to the appropriation created by 31 U.S.C. § 1322(b)(2). E.g., B-205877, March 16, 1982.

We have stated on a number of occasions that where there is no dispute as to the entitlement, overpayments may,

^{2/} This appropriation, Treasury account 20X1807, is entitled "Refund of Moneys Erroneously Received and Covered." Payments are made by the Treasury Department upon receipt of a properly certified Standard Form 1166 from the agency involved. Except for doubtful matters, GAO involvement is not required. See Circular Letter B-142380, March 24, 1960.

as a matter of public policy, be refunded without requiring the formal submission of a claim. E.g., 58 Comp. Gen. 372, 375 (1979); B-220942, Jan. 7, 1986. Accordingly, the Forest Service may proceed, on its own initiative, to make refunds of interest overpayments to those contractors which it determines to be governed by the Puget Sound decision.

In cases where the Forest Service determines it to be feasible, we see no reason why the refund may not be in the form of an offset against amounts due to the Forest Service under other timber sale contracts. Should it choose to pursue this approach, the Forest Service may wish to consider giving the contractor the option of either reducing future payments or requesting immediate payment of the refund.

What we have said thus far should be sufficient to dispose of the vast majority of cases. There are a few instances, however, in which contractors have filed or may file claims under the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-13. These cases raise certain additional issues.

Under the Contract Disputes Act, the contractor must file the claim with the contracting officer, who then issues a decision which is final unless appealed. 41 U.S.C. § 605. Since the Forest Service has determined that it will not dispute the entitlement of contractors falling within the scope of the Puget Sound decision, there should be no reason for any further cases to reach the Board of Contract Appeals. The contracting officer's "decision" can be a brief statement that the claim is being allowed, citing Puget Sound as authority. Since there will be no appeal, the decision can be immediately placed into the Forest Service's payment channels, to be paid in accordance with this decision.

For claims approved by a contracting officer under the Contract Disputes Act, the contractor is entitled to interest under 41 U.S.C. § 611. Since the appropriation established by 31 U.S.C. § 1322(b)(2) is limited by its terms to refunding amounts actually received, it could not be used to pay the interest required by 41 U.S.C. § 611. For those claims on which interest will be required under the Contract Disputes Act, the refund portion should be charged to account 20X1807, and the interest portion to the Forest Service's appropriations for administration of timber sale contracts, for the fiscal year in which the award is made. Cf. 63 Comp. Gen. 308 (1984).

Finally, we note that the Board in the Puget Sound decision determined that the Forest Service had collected excessive interest, but did not specifically order a refund. Thus, Puget Sound's entitlement to the refund follows logically from the decision but was not expressly directed by it. Therefore, since there was no "monetary award" to trigger the payment provisions of the Contract Disputes Act (41 U.S.C § 612), the payment to Puget Sound should be made as outlined in the preceding paragraph.



Acting Comptroller General
of the United States