

**DECISION**



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

Q1143

FILE: B-186693

DATE: July 15, 1976

MATTER OF: Allis-Chalmers Corporation

97921

**DIGEST:**

The term "latest available indices" on date of shipment as used in contract for purpose of price adjustment is held to mean latest published indices rather than latest preliminary unpublished figures available from Department of Labor.

By letter of June 7, 1976, a Certifying Officer of the Bonneville Power Administration (BPA), U.S. Department of Interior, asks this Office to interpret the payment provision contained in Bonneville Power Administration Contract No. 14-03-5118N.

The contract was entered into by BPA and the Allis-Chalmers Corporation, and it includes a "Price Policy Clause," drafted by Allis-Chalmers, which provides as follows: (underscoring supplied)

"The price is firm only on the date of purchase. Beginning on the date of purchase the price will be adjusted upward or downward based on the changes in the Bureau of Labor Statistics Labor and Material indices as follows:

1. Base indices established below are those available on September 1, 1974.
2. For the purposes of adjustment indices will be applied in the following proportions to selling price.

\* \* \* \* \*

3. Labor index shall be the 'Gross Average Hourly Earnings' rate in the Electrical Equipment and Supplies Industry Index (SIC 36) as reported by the Bureau of Labor Statistics of the U.S. Department of Labor in the 'Monthly Labor Review.'
4. Materials indices shall be the following Wholesale Price Indices as published by the Bureau of Labor Statistics in 'Wholesale Prices and Price Indexes.'

Steel Mill Products (WPI 1013)  
Electrical Steel Sheet, Alloy  
(WPI 1013 0265)  
Copper Wirebar, Domestic  
(WPI 1022 0106)  
Aluminum Wire and Cable  
(WPI 1026 02)

5. Adjustments shall be made by comparing the latest available indices on the date of shipment with the base indices."

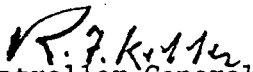
The dispute between BPA and Allis-Chalmers arises over the interpretation of the phrase "latest available indices" in Paragraph 5. BPA argues that it considers the language to mean that on the date of shipment payment would be computed by looking to the latest available final indices published on that date. This interpretation BPA claims is "reasonable, logical, and consistent" with the method upon which the base indices were computed and is arrived at by reading the contract as a whole. On the other hand, Allis-Chalmers takes the position that "latest available" means that payments should be computed by telephoning the Department of Labor on the date of shipment and by using the preliminary unpublished figures so obtained. Allis-Chalmers argues that there is no need to look beyond the base indices listed in Paragraph 2 to the method used to obtain them.

We note that paragraph 3 of the clause refers to rates "reported by the Bureau of Labor Statistics \* \* \* in the 'Monthly Labor Review.'" Moreover, paragraph 4 states that the Material indices used will be those "published" by the Bureau of Labor Statistics in the "Wholesale Prices and Price Indexes." Thus these paragraphs use the terms "reported" and "published." The implication, therefore, is that the "latest available indices" are to be found in printed material.

A pertinent and basic rule of contract law is that in order to reach the proper interpretation of a contract it is often necessary to go beyond the four corners of the writing to look at the "surrounding circumstances." 4 Williston On Contracts § 618, (3d. ed. 1961); 3 Corbin On Contracts § 536 (1960). Here, it is undisputed that the base indices were compiled from the Department of Labor's latest available published indices. Consequently, reading Paragraph 1 in light of this information results in the word "available" being translated into the word "published." Since it would be both logical and consistent to give the same meaning to the word "available" as used in both Paragraphs 1 and 5, it follows that the phrase "latest available" in Paragraph 5 translates into the phrase "latest published."

Finally, the basic rule that doubts arising from any ambiguity of language are resolved against the drafter further supports this interpretation. 3 Corbin On Contracts § 559, supra; 51 Comp. Gen. 119 (1972). Since the Price Policy Clause was drafted by Allis-Chalmers, it must be interpreted most strongly in the agency's favor so that "latest available" is to be understood to mean "latest published."

For the foregoing reasons, therefore, the interpretation urged by the Allis-Chalmers Corporation cannot be adopted, and the meaning of "latest available indices" is held to be equivalent to the meaning of "latest available published indices."

  
Deputy Comptroller General  
of the United States