



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

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B-178368

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September 24, 1973

C. L. Bates, Esquire
First National Bank Building
Rawlins, Wyoming 82301

Attention: John V. Crow, Esq.

Gentlemen:

BEST DOCUMENT AVAILABLE

Reference is made to your letter dated February 12, 1973, referencing certificate of settlement dated January 13, 1972, involving claim No. 2-2465655 and requesting reconsideration of the setoff of the \$3,871.31 final payment due Hudco under thinning contract 05-70-19 against the \$6,102.84 damages incurred by the Government as a result of Hudco's breach of timber sale contract 05-422.

You allege that the setoff should not have been made because the claim for damages is against Hudco whereas the thinning contract was performed by Dave Crow with the knowledge of the Forest Service. However, both contracts 05-70-19 and 05-422 were awarded to Hudco with Dave Crow signing on behalf of the corporation in the capacities of secretary and vice president, respectively. The acts of an officer in executing a contract within the scope of his authority bind his company. 3 Ill. Jur. 2d, Agency sec. 253. Thus, both contracts are deemed to be with Hudco.

The right of setoff has been held to be inherent in the United States and to be grounded in the common law right of every creditor to apply the monies of his debtor in his hands to the extinguishment of the amounts due him from the debtor. Pratt v. United States, 40 U.S. 335 (1841); McKnight v. United States, 95 U.S. 110 (1875); Payne v. United States, 229 U.S. 47 (1913). Thus, where a person is both a debtor and creditor to the Government in any form, the accounting officers are required by law to consider both the debts and credits and to set off one indebtedness against the other, and certify only the balance. Spencer v. United States, 17 Ct. Cl. 322 (1831). Furthermore, the Government's right to set off a contractor's debts against contract proceeds extends to debts owed by the contractor as a result of separate and independent transactions. United States v. Lansey Trust Co., 332 U.S. 234 (1947).

You have also claimed that "there was no merchantable timber sold as specified in Timber Sale Contract No. 05-422, so failure to harvest

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same is not a proper charge." In that regard, we note that the contract contains a Disputes clause, DTB.5, which provides for the resolution of factual disputes by the Forest Service with right of appeal to the Secretary of Agriculture. In the meantime, although the amount due the Government may not have been finalized under the Disputes procedure provided by the contract, the unilateral deduction of the amount estimated by the Government to be due is not inappropriate. B-176791, September 8, 1972.

Since you did not respond to our request for additional information in our letter of April 16, 1973, and subsequent telephone call on May 25, 1973, we have decided the matter on the record before us and on that basis the setoff action is sustained.

Sincerely yours,

Paul G. Deubling

For the Comptroller General
of the United States

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