

DECISION



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

FILE: B-183138

DATE: May 28, 1975

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97267

MATTER OF: Zip-O-Log Mills, Inc.

DIGEST:

Claim for \$17,774.38 is allowable where both parties to timber sale contract were of mistaken belief that minimum acceptable bid price (stated in contract) reflected correct road use charges.

This is a claim asserted by Zip-O-Log Mills, Inc., against the Forest Service in the amount of \$17,774.38 for overpayment of road use fees on timber contract No. 02469-5, Branch 200 sale.

On February 18, 1972, the Forest Service mailed the Branch 200 Timber Sale Prospectus to all prospective purchasers. The prospectus stated in pertinent part that:

"Purchaser shall execute a license agreement with Weyerhaeuser and Georgia-Pacific for use of Little Fall Creek and Branch 200 Roads. Maintenance and use fees are:

\$2.43/M for merchantable timber
\$1.76 per M for cull material"

The agency states that these figures were used in computing its appraisals (i.e., the minimum acceptable prices for the timber) which were also stated in the prospectus.

The legal advertisement for the sale which appears in the Eugene (Oregon) Register-Guard contained the following statement:

"* * * Additional deposits for road maintenance on National Forest roads over the appraised route are: \$0.06 per M board feet for all species subject to per M pricing, and \$2.43 per M board feet for road maintenance subject to road use agreement on Roads No. 1848 and 1806G. * * *"

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However, the contract itself provided only that the purchaser is authorized to use roads 1848 and 1806G subject to the terms contained in the Road Use Agreements between the Forest Service and Weyerhaeuser. The Forest Service's agreements provided for the following road use fees: \$0.18/M/mile for merchantable grades; \$0.13/M/mile for nonmerchantable; \$0.09/cord/mile, with an equal amount to be paid for road maintenance.

The Forest Service agrees that under the rates stated above Zip-O-Log paid a total of \$45,447.30 to Weyerhaeuser and Georgia-Pacific while, under the rates set out in the prospectus, only \$27,627.92 would have had to have been paid.

The Forest Service states that it has historically taken the position that bidders have no legal right to rely upon the prospectus. Moreover, the prospectus here in question specifically stated that: "INFORMATION GIVEN HERE OR OTHERWISE PROVIDED IS NOT A PART OF THE CONTRACT UNLESS STATED THEREIN."

In this regard, we note that the Forest Service's minimum acceptable prices were stated both in the prospectus and in the contract and that it is further admitted that these figures were based upon the mistaken road use charges. Moreover, it appears that both parties were of the mistaken belief that the appraisal floor set out both in the contract and prospectus reflected the correct road use charges.

We believe the instant situation is analogous to that set out in Iowa Road Builders Company, B-182809, January 28, 1975. There, we held that a mutual mistake occurred where both parties entered into the contract believing that the actual area of paving required was set out in the contract when, in fact, it was not.

Accordingly, we believe it would be appropriate in this instance to remedy the situation by an adjustment of the contract price in the amount claimed. Iowa Road Builders Company, supra, and cases cited therein.


Deputy Comptroller General
of the United States