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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20540**

FILE: 3-187952

DATE: October 18, 1977

MATTER OF: SWF Plywood Company

- DIGEST:
1. Timber sales contract included agreement to allow third-party scaling services at buyer's cost, terminable by either party upon 30 days' written notice. Therefore, any third-party scaling costs incurred before expiration of notice period after written termination by buyer must be borne by buyer.
 2. Timber sales contract may not be modified to retroactively reimburse buyer in form of stumpage rate reduction for third-party scaling costs already incurred after expiration of contract modification allowing third-party scaling at buyer's expense. 36 C.F.R. 221.16(a) (1976). However, since buyer continued to procure services in good faith and Government benefited thereby (by being relieved of scaling responsibility under initial contract), and buyer's actions have been properly ratified, reimbursement on quantum meruit basis is allowed.

The United States Department of Agriculture Forest Service (Forest Service) has asked us to consider the propriety of the payment of claims by SWF Plywood Company (SWF) totaling \$13,578.42 in third-party scaling costs incurred under a contract for the sale by the Forest Service to SWF of timber in the Klamath National Forest.

The original sales contract provided that scaling of the timber (the determination of the number of board feet actually cut by the buyer) was to be done by the Forest Service. On March 11, 1975, the parties executed an agreement providing for scaling by the Northern California and Southern Oregon Log Scaling and Grading Bureaus to be paid for by SWF (then Caroline Pacific Plywood, Inc.). The agreement did not provide for a reduction in stumpage rate (the rate paid by the buyer under any given contract) to reflect the savings to the Forest Service. In addition, the agreement could, by its terms, be terminated by either party, if unsatisfactory for any reason, after 30 days' written notice.

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On December 4, 1975, SWF requested modification of its contract to allow third-party scaling with a concurrent stumpage rate reduction. On December 15, SWF requested termination of the March 11 agreement, effective January 3, 1976. A "Temporary Third Party Mill Deck Scaling" agreement was entered into by SWF and the Forest Service on January 11, 1976. It provided that third-party scaling was acceptable and stated:

"All contracts for sales * * *, not requiring Third Party Bureau Scaling, will be modified to require such scaling. Appropriate stumpage adjustments will be made * * * for each contract modified."

The agreement did not provide a date by which modification would be made, and actual modification did not occur until July 13, 1976. The Forest Service states that the delay in modification "was caused by other work priorities in the Klamath N.F."

SWF's claims cover the period from August 1975, when Forest Service Regional directions first provided for issuance of such modifications, until the date the modification was finally issued.

The parties were operating under the March 11, 1975, agreement during the period up to January 14, 1976, which includes the 30 days' notice period after SWF's request for termination of that agreement. Accordingly, there is no legal basis to reimburse SWF in the form of reduced stumpage rates for any third-party scaling costs incurred during that time. Cal-Pacific Manufacturing Company - Reconsideration, B-187952, June 30, 1977, 77-1 CPD 465; see 1 CORBIN ON CONTRACTS §134 (1952).

In regard to the remainder of SWF's claims, the modification issued on July 13, 1976, could not properly provide SWF with a stumpage rate reduction to recognize third-party scaling costs incurred prior to that date, since 36 C.F.R. §221.16(a) (1976) prohibits the retroactive modification of timber sales contracts. Gene Peters, 56 Comp. Gen. 459 (1977), 77-1 CPD 225.

However, in certain situations, even absent a formally executed contract or modification, relief may be furnished to a claimant for services rendered on a quantum meruit basis (the reasonable value of

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work or labor), or for goods furnished on a quantum valebant basis (the reasonable value of goods sold and delivered). Potter Instrument Company, B-180431, July 18, 1977, 77-2 CPD 35. For a right to such payment to be recognized, it must be shown that the Government received a benefit, and that the claimant's unauthorized action has been ratified by authorized contracting officials. Monitor Products Company, Inc., B-182437, July 27, 1976, 76-2 CPD 85.

Here, after the January 14, 1976, termination of the March 11, 1975, agreement under which SWF was bound to pay for third-party scaling costs, the Forest Service became responsible for scaling pursuant to the original timber sales contract. Distinguish Cal-Pacific Manufacturing Company - Reconsideration, supra, and Gene Peters, supra. Nevertheless, SWF, with the approval of Forest Service personnel, and in anticipation of a modification to provide for third-party scaling and a reduced stumpage rate as promised in writing, continued to procure third-party scaling. Thus, the Government clearly received a benefit, i.e., relief from the responsibility and cost of doing the scaling itself, as a result of SWF's good faith performance.

Since under the circumstances the Government benefited from the third-party scaling procured by SWF, and since the acceptance of such services constituted ratification thereof, the payment of the amount claimed for the period from January 14, 1976, to July 13, 1976, may be allowed, if otherwise proper. See Monitor Products Company, Inc., supra.


Acting Comptroller General
of the United States