

DECISION



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

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118285*

FILE: B-207165

DATE: May 3, 1982

MATTER OF: Department of Agriculture--
Request for Advance Decision

DIGEST:

Modification of timber sale contracts to permit contractors to defer required monthly payments is permissible where contractors agree to pay interest for deferred payment period, since interest is legal consideration.

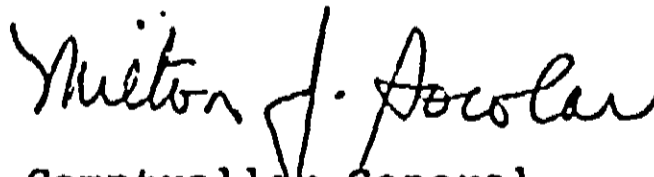
The Secretary of Agriculture has requested an advance decision of this Office concerning the proposed modification of a number of timber sale contracts.

We have no legal objection to the modifications.

On May 24, 1980, the United States Forest Service extended a number of timber sale contracts entered into prior to April 1, 1980, and due to terminate prior to April 1982. Due to extremely unfavorable economic conditions in the timber industry, it appeared that the contractors would be unable to perform within the contract term, and would face default terminations if the contracts were not extended. The extensions were made under the authority of 16 U.S.C. § 472a(c) (1976), which authorizes the Secretary of Agriculture to grant extensions when he finds that the substantial overriding public interest justifies the extensions. As a condition of extending the contracts for the benefit of the contractors, the Forest Service modified the payment provision of the contracts to benefit the Government. Prior to the extension, the contracts contained the standard payment clause, which requires that payment be made shortly before timber is actually cut. After the extension, the contracts contained a clause requiring monthly payments to be made during the first operating season so that all timber would be paid for by the last day of the season, whether or not timber was actually cut.

The first of these payments is due in May 1982, and economic conditions have not improved in the timber industry. Consequently, the Forest Service proposes a further modification of the payment terms of the contract to essentially waive the monthly payment requirement and return to the previous system of payment just prior to cutting. In return, the Forest Service proposes to require the contractors to pay interest on the deferred payments for the period from the payment due dates until payment is actually made. The interest rate is to be set by the prevailing Department of the Treasury interest rates.

As the Forest Service recognized in its request, no officer or agent of the Government has authority to relinquish a vested contractual right of the Government without adequate legal consideration. Bausch & Lomb Optical Co. v. United States, 78 Ct. Cl. 584, cert. denied, 292 U.S. 645 (1934). The contractual right in question here is the right to the payments on the dates that they are due. If the contracts are modified as proposed, the Government will still retain the right to the money involved, but will receive it at a later date. Consequently, the Government will lose the use of the money for the deferred payment period. In our opinion, interest for that period at the fair market rate is legal consideration for the Government's deferral of the time for payment. See, e.g., Brooklyn Bank v. O'Neil, 324 U.S. 697 (1945); Deputy v. Dupont, 308 U.S. 488, 498 (1940); Daniel v. First National Bank of Birmingham, 228 F.2d 803, 806 (1956). Therefore, we have no legal objection to this proposed modification.



Acting Comptroller General
of the United States