

GAO

United States General Accounting Office

Report to Congressional Requesters

October 1993

TIMBER SALE CONTRACT DEFAULTS

Forest Service Needs to Strengthen Its Performance Bond and Contract Provisions



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United States
General Accounting Office
Washington, D.C. 20548

**Resources, Community, and
Economic Development Division**

B-254115

October 28, 1993

The Honorable George Miller
Chairman, Committee on Natural
Resources
House of Representatives

The Honorable Mike Synar
Chairman, Environment, Energy, and
Natural Resources Subcommittee
Committee on Government Operations
House of Representatives

The Honorable Charlie Rose
Chairman, Subcommittee on Specialty
Crops and Natural Resources
Committee on Agriculture
House of Representatives

Each year, the U.S. Department of Agriculture's (USDA) Forest Service sells timber for harvest from the national forests. During the late 1970s, an increased demand for timber products, among other things, resulted in aggressive bidding for federal timber sale contracts. In the early 1980s, when the economy slowed and housing starts fell, lumber prices dropped to a point that prevented many timber purchasers from selling processed timber at prices that would allow them to recover their costs.

Between January 1, 1982, and March 31, 1993, more than 1,900 purchasers defaulted on 2,812 timber sale contracts. Under the provisions of these contracts, when such defaults occur, the Forest Service is entitled to damages in the amount of the cost of reselling the timber and any difference between the price under the defaulted contract and the price under the new contract.

This report responds to your request that we examine (1) the extent to which the Forest Service has collected damages owed to the federal government for defaults on timber sale contracts that occurred between January 1, 1982, and March 31, 1993, and the reasons for any delays in collection and (2) measures the Forest Service has taken to protect the government from future losses as a result of defaults.

Results in Brief

The Forest Service has assessed damages totaling about \$302 million against purchasers who defaulted on timber sale contracts between January 1, 1982, and March 31, 1993. Of this amount, the Forest Service has collected about \$42 million, or 14 percent, and has determined that about \$136 million, or 45 percent, is uncollectible for various reasons, such as the bankruptcy or death of the purchaser. Continuing litigation has been the dominant reason for the delays in the final disposition of the remaining assessed damages of about \$124 million. Most of this amount—\$118.7 million—is owed by 14 timber purchasers, for whom the damage assessments range from \$1.2 million to \$24.8 million.

When many of these defaulted contracts were awarded, the Forest Service had few safeguards in place to protect the government against losses resulting from defaults. The Forest Service has since taken a number of steps designed to reduce defaults and better protect the government against losses. For example, it began requiring purchasers to make down payments and increased the dollar limit on the performance bond that purchasers are required to provide. The Forest Service is considering other measures, including retaining down payments until the contracts are substantially complete and clarifying the liability provisions in a new performance bond.

Background

Defaults on timber sale contracts stemmed largely from a “boom-and-bust” cycle in timber prices a decade ago. To protect their timber supply and hedge against inflation, purchasers bid increasingly higher amounts for federal timber, especially in the West. However, between 1979 and 1981, the price of timber dropped by more than 80 percent, bringing lumber prices down to a level that prevented many purchasers from selling processed timber at prices that would allow them to recover their costs. As a result, many timber purchasers were faced with financial problems—even bankruptcy—if they executed these high-priced contracts.

To provide a measure of relief from the financial burden of high-priced contracts and low lumber prices, the Congress enacted the Federal Timber Contract Payment Modification Act in 1984. This act allowed holders of certain high-priced timber sale contracts to be released from their contract obligations by paying a fee to the government. Purchasers paid about \$172 million to buy out more than 1,600 contracts. If these contracts had been executed under their original terms, they would have provided about \$2.5 billion to the Forest Service. Still, a number of defaults had already

taken place, and more defaults subsequently occurred when some purchasers found themselves unable to carry out contracts not covered under the act's buyout provisions.

Under the terms of federal timber sale contracts, purchasers agree to harvest the timber within a specified period of time and take other actions, such as building roads and clearing debris after harvest. Purchasers who do not comply with these terms are in breach of contract, and the Forest Service can assess and collect default damages as prescribed in the contract. The amount of damages is calculated by comparing the price under the current contract with (1) the reappraised price at the contract's termination date or (2) the actual resale price of the remaining timber plus the administrative and other costs of resale. Interest, penalties, and administrative costs associated with determining and collecting the damages are also included, as authorized by the Debt Collections Act of 1982 (31 U.S.C. 3717).

Purchasers who disagree with the Forest Service's decision may appeal to USDA's Board of Contract Appeals or bring action in the U.S. Court of Federal Claims (claims court). Either party may appeal a decision of one of these bodies to the U.S. Court of Appeals for the Federal Circuit (federal circuit court).

Forest Service Has Collected Some Damages, but Litigation Is Delaying Disposition of Other Cases

As of March 31, 1993, the Forest Service had collected \$42.2 million, or 14 percent, of the \$301.5 million in damages assessed against timber purchasers who defaulted on their contracts. It had determined that \$135.6 million, or 45 percent of the total, was uncollectible. Primarily as a result of bankruptcies and probate courts' rulings that no assets were available to pay the damages after the purchaser's death, the Forest Service had written off \$97.2 million of the uncollectible amount and was planning to write off the remaining \$38.4 million as additional proceedings were completed. Appendix I presents further details about these write-offs.

Also, as of March 31, 1993, the disposition of 41 percent of the damages assessed by the Forest Service, or \$123.7 million, remained in process. Most of this amount—\$118.7 million—was owed by 14 timber purchasers, for whom the damage assessments range from \$1.2 million to \$24.8 million. The remaining \$8.4 million was owed by 250 timber purchasers.

Litigation has been the dominant reason for the delays in disposing of this remaining amount. For many of the issues in litigation, the legal process has taken a number of years. For example:

- In 1984, several purchasers challenged the constitutionality of using the claims court as a forum for hearing their cases, arguing that the cases should be heard in U.S. District Court (district court) instead. A final decision that the claims court had jurisdiction was not reached until 1991.
- One purchaser's 1987 appeal of damages took until 1993 to resolve, in part because the Forest Service did not resell the timber but instead designated the land as critical habitat for the Northern Spotted Owl. In February 1993, the federal circuit court ruled that the purchaser still owed damages even though the timber was not resold.

Other legal issues still remain to be resolved. These issues include, for example, whether damages were accurately calculated and whether the government should have extended the contract periods so that the purchasers could harvest the timber.

Litigation has also delayed collection on performance bonds provided by the timber purchasers as a condition of their contracts. For example, a surety company asserted in a complaint in the claims court that it did not have to pay the government while a purchaser was still contesting damages. Even though the claims and federal circuit courts have since ruled that a surety company is liable upon receipt of the government's first demand for payment under the bond, officials from USDA's Office of General Counsel doubt that this matter will be resolved soon. They speculated that at least some surety companies would pursue these issues in district court, further delaying the collection of damages.

In the meantime, USDA's Office of General Counsel is taking steps to secure the bond amounts for the government. It has negotiated agreements under which five of the surety companies that guaranteed performance on defaulted timber sale contracts have deposited \$11.7 million into interest-bearing escrow accounts pending the final outcome of litigation between the purchasers and the Forest Service. These deposits are composed of the amount of the performance bond, the accrued interest, and penalties. If the purchasers win their cases, the surety companies will recover the money plus interest. Conversely, if the government wins, it will receive the money plus interest. The Office of General Counsel is negotiating with a sixth surety company about a similar deposit. Appendix II discusses the legal issues described above in further detail.

Forest Service Has Taken Steps to Better Protect the Government, but Further Measures Are Needed

The Forest Service has taken a number of steps to better protect the government's financial interest by revising its timber sale contract provisions and making certain other administrative or procedural changes. However, to provide further protection, it needs to implement, as soon as possible, other measures currently under consideration. These measures include retaining the purchaser's down payment until the contract is substantially complete and clarifying the liability provisions of performance bonds.

Forest Service Has Acted to Better Protect the Government's Financial Interest

Before 1982, when many of the 2,812 defaulted contracts were originally signed, the Forest Service had few mechanisms to protect the government's financial interest. At that time, the Forest Service did not require purchasers to make down payments on contracts. The government's main protection was the required performance bond. However, this requirement provided limited protection for two reasons. First, the amount of the bond was capped at 10 percent of the bid value or \$200,000, whichever was less. For many defaulted contracts, the amount of the bond was often insufficient to cover the damages. Second, neither the timber contract nor the bond agreement stated that the surety company was liable for payment at the time a default occurred. As we pointed out above, resolving the issue of the surety company's liability in the courts has delayed collection efforts.

Since 1982, the Forest Service has taken a number of steps to better protect the government's financial interest. These measures, described in more detail in appendix III, include the following:

- Requiring down payments. In 1982, the Forest Service began requiring a down payment on the contract equal to 5 percent of the bid value. In 1983, it increased the amount to 10 percent, and in 1988 it established a requirement that purchasers with a past record of failure to perform their contracts would pay an even higher percentage. In some cases, the down payment has been doubled as a result. Under the terms of current contracts, after 25 percent of the timber volume has been harvested, the purchaser can elect to receive a cash refund of the down payment, transfer it to another sale, or use it to pay for timber remaining in the original contract.
- Raising the dollar limit on performance bonds. In 1982, the Forest Service raised the maximum amount of the performance bond from \$200,000 to \$500,000. The amount of the bond is set at 10 percent of the bid value or \$500,000, whichever is less. For example, on a \$1 million contract, the

performance bond is set at \$100,000; on a \$10 million contract, the performance bond is set at the \$500,000 maximum.

From 1988 to 1992, purchasers defaulted on 702 contracts, and damages totaled \$9.2 million. By comparison, from 1982 to 1987 purchasers defaulted on 2,102 contracts, and damages totaled \$293.4 million. The number of defaulted contracts continued to decline during 1988-92, falling from 195 contracts in 1988 to 63 in 1992. However, a clear link between the changes in contract provisions and the diminished number of defaults cannot be established because other factors may have been at work. These factors include (1) the small number of timber sale contracts and the low volume of timber included in the contracts offered in recent years and (2) the increasingly favorable prices for timber products relative to the prices in the years when the number of defaults was greater.

Forest Service Needs to Implement Additional Protective Measures

In April 1991 testimony before the Subcommittee on Interior and Related Agencies, House Committee on Appropriations, we stated that, unlike other federal, state, and private timber sellers, the Forest Service returns or credits the purchaser's down payment before the contract is substantially complete.¹ By retaining the down payment for a longer period, the Forest Service could lessen its reliance on performance bonds and thereby increase the government's access to funds in default cases. To better protect the government's financial interest, we recommended that the Secretary of Agriculture direct the Chief of the Forest Service to retain the down payment until the contract is substantially complete.

Some action has been taken on this recommendation. In July 1991, the Secretary of Agriculture directed the Forest Service to develop and publish for comment a proposed rule that would respond to our concern. However, the previous administration's moratorium on federal regulations delayed publication of the proposed policy. In September 1993, Forest Service officials told us that they had prepared an advance notice of proposed policy for retaining down payments on timber contracts and were awaiting approval by USDA and the Office of Management and Budget for publication of this notice in the Federal Register.

The need to clarify the liability provisions of performance bonds has been discussed for several years. In January 1989, the Forest Service published a notice of proposed policy in the Federal Register about the agency's

¹Forest Service Needs to Improve Efforts to Protect the Government's Financial Interests and Reduce Below-Cost Timber Sales (GAO/T-RCED-91-42, Apr. 24, 1991).

performance bond form for timber sales. Under the proposal, the use of the Standard Form 25 for timber sale contracts would have been eliminated and a new Forest Service performance bond would have been created. According to the notice, the new performance bond would clarify (1) the obligations of a surety company in regard to what is being guaranteed, (2) the time that payment would be due from a surety company in case the principal defaults on the contract, and (3) the additional charges (i.e., interest, penalties, and administrative costs) that would be assessed if payment was not received from the surety company when it was due. The proposed policy was never published in final form. According to Forest Service officials of the Fiscal and Accounting Services Staff and USDA's Office of General Counsel, the proposed performance bond was withdrawn because of the negative comments they received from the public, especially from industry.

In September 1990, USDA's Inspector General recommended that the Forest Service revise the language in its performance bond to state that surety companies are liable when purchasers are found to be in default on their contracts. The Inspector General also recommended that surety companies' liability include interest, penalties, and administrative costs on delinquent debts.

Two decisions, one by the courts and one by the Comptroller General of the United States, have supported these recommended changes in the performance bond. On December 10, 1991, the federal circuit court affirmed a claims court decision that (1) the surety company's obligation to pay arises when the purchaser defaults on the timber contract and the government notifies the surety company and (2) the surety company has to pay interest to the government from the date it becomes liable even if the total exceeds the amount of the bond. In an opinion dated May 24, 1991, the Comptroller General stated that when a contract is guaranteed by a performance bond, the surety company is liable for payment under the bond at the time of default and for penalties, interest, and administrative costs sustained by the Forest Service even if the total exceeds the amount of the bond.

As of September 1993, the Forest Service was developing a new performance bond consistent with the court's decision and the Comptroller General's opinion. The Forest Service plans to publish another notice of the proposed change in the Forest Service's performance bond in the Federal Register in January 1994.

Conclusions

The losses sustained by the Forest Service, together with the relative lack of success in collecting damages stemming from these defaults, point to the need to better protect the government's financial interest in timber sale contracts. Litigation has further slowed resolution of past contract defaults. For current and future timber sale contracts, the Forest Service has taken a number of steps to help reduce defaults and to better protect the government's financial interest when defaults occur. However, we believe that additional measures currently under consideration by the Forest Service would provide additional protection and should be implemented as soon as possible. Specifically, in keeping with our previous recommendation, we continue to believe that the Forest Service should revise its timber sale contracts to provide for the retention of down payments on the contracts until they have been substantially completed. In addition, we believe that a new Forest Service performance bond that clearly states that the surety company is liable for damages at the time of default and for interest, penalties, and administrative costs on delinquent debts from the time the default occurs would better protect the financial interest of the federal government.

Recommendation

We recommend that the Secretary of Agriculture direct the Chief of the Forest Service to continue to develop and implement, as soon as possible, a performance bond that clearly states that the surety company is liable for damages at the time of default and for interest, penalties, and administrative costs on delinquent debts from the time the default occurs.

Agency Comments

We discussed the facts and conclusions in this report with timber management officials at Forest Service headquarters and its Pacific Northwest Region, and with officials at USDA's Office of General Counsel. They generally agreed with our facts and conclusions. In a few instances they made technical suggestions, and we made changes where appropriate. However, as requested, we did not obtain written comments on a draft of this report.

Scope and Methodology

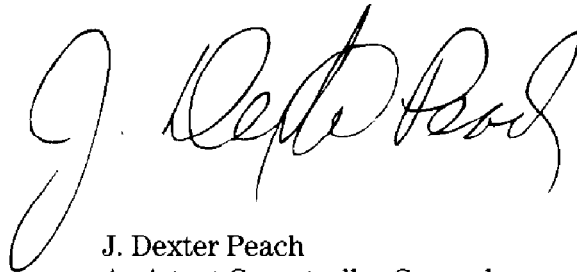
To address the issues you asked us to review, we conducted work at Forest Service headquarters and its Pacific Northwest Region, where the majority of defaults on timber sale contracts with the highest value occurred. We analyzed data on defaults for the period January 1, 1982, to March 31, 1993. We obtained these data from the Forest Service's Sales Tracking and Reporting System.

To determine how damages were collected and what factors had affected the Forest Service's ability to collect damages, we worked with default coordinators at headquarters and the Pacific Northwest Region and with attorneys at USDA's Office of General Counsel.

Our review was performed between February and September 1993 in accordance with generally accepted government auditing standards.

As arranged with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 10 days after the date of this letter. At that time, we will send copies to the Secretary of Agriculture and the Director, Office of Management and Budget. We will make copies available to others on request.

This work was performed under the direction of James Duffus III, Director, Natural Resources Management Issues, who may be reached on (202) 512-7756 if you or your staff have any questions. Major contributors to this report are listed in appendix IV.



J. Dexter Peach
Assistant Comptroller General

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Abbreviations

GAO	General Accounting Office
USDA	U.S. Department of Agriculture

Current and Planned Write-Offs of Damages Resulting From Defaults on Timber Sale Contracts

As of March 31, 1993, the Forest Service had determined that \$135.6 million of the \$301.5 million in damages from contracts on which purchasers defaulted between January 1, 1982, and March 31, 1993, was uncollectible. It had written off \$97.2 million of this amount. According to Forest Service records, the primary reason for these write-offs¹ are as follows:

- Bankruptcy court proceedings (\$49.1 million). The Forest Service has written off \$49.1 million that bankruptcy courts have forgiven as part of bankruptcy settlements. These cases involved 17 timber purchasers. For 10 purchasers, the amounts written off ranged from \$100,000 to \$700,000; for another seven purchasers, the amounts ranged from \$2.6 million to \$14.2 million. Officials in the United States Department of Agriculture's (USDA) Office of General Counsel said the government usually places very low priority on obtaining payment from bankrupt purchasers because it is an unsecured creditor.
- Probate court proceedings (\$26.5 million). After one purchaser's death, a probate court determined that no assets were available to pay the Forest Service's damage claims.
- Negotiated settlements (\$8.8 million). In cases involving 12 purchasers, the government settled for less than the total damages owed. For example, in these cases the government accepted land in lieu of cash damages and settled for partial amounts from firms that were no longer in business and had no other assets.
- Determination of lack of assets (\$6.1 million). In the case of one purchaser, the Forest Service turned the matter over to the Department of Justice, which determined that the purchaser had no assets against which damages could be assessed. As a result, the Forest Service wrote off the amount.
- Errors in damage assessments and other procedures (\$3.0 million). In cases involving five purchasers, the Forest Service miscalculated damages or included erroneous data in the data base. The resulting write-offs for individuals ranged from \$100,000 to \$1.7 million.

In addition to the \$97.2 million already written off as uncollectible, the Forest Service plans to write off another \$38.4 million when it receives approval from USDA's Office of General Counsel. Damages involving four purchasers will be written off for the following reasons:

¹This listing does not include \$3.7 million in write-offs made for various other reasons on numerous small contracts.

Appendix I
Current and Planned Write-Offs of Damages
Resulting From Defaults on Timber Sale
Contracts

- Bankruptcy court proceedings (\$27.2 million). A bankruptcy court forgave this amount for one purchaser.
- Probate court proceedings (\$8.9 million). After the death of another purchaser, the court determined that there were no assets to pay the damages owed by the purchaser to the government.
- Negotiated settlement (\$1.8 million). On a \$2.7 million claim involving one purchaser, the Department of Justice negotiated a settlement of about \$900,000 on the basis of the purchaser's ability to pay.
- Determination of lack of assets (\$0.5 million). The Department of Justice determined that one purchaser had no assets against which damages could be assessed.

Major Litigation on Defaulted Timber Sale Contracts

Since 1984, many timber contract purchasers have filed claims seeking relief from the Forest Service's assessment of damages. The government has filed counterclaims against these purchasers, asserting breach of contract terms. A number of issues have made resolution of these claims and counterclaims a time-consuming task. This appendix describes several of the key issues involved in the litigation.

Right to a Jury Trial

One major question raised by the purchasers was the constitutionality of using the U.S. Court of Federal Claims (claims court) as a forum in which to hear cases of default on timber sale contracts. Beginning in 1984, numerous timber purchasers moved in separate actions to dismiss the government's counterclaims of breach of contract. They based their position, in part, on the contention that the claims court lacked jurisdiction to hear the counterclaim. They argued that the Seventh Amendment to the Constitution entitled each purchaser to a jury trial.¹ The claims court consolidated the cases into one, *Seaboard Lumber Co., et al., v. United States*, and issued a ruling rejecting the purchasers' arguments.² On appeal, the U.S. Court of Appeals for the Federal Circuit (federal circuit court) affirmed this decision,³ holding that the Congress, in the Contract Disputes Act, had validly conferred jurisdiction over the government's counterclaims to the claims court. The court rejected the purchasers' Seventh Amendment argument, holding that each timber company had agreed in its timber sale contract to waive the right to a jury trial on contract disputes.

At the conclusion of the purchasers' challenge to the constitutionality of using the claims court, USDA's Office of General Counsel and the Civil Division of the Department of Justice formed a team of attorneys to manage the timber default cases. This team is pursuing the collection of damages owed the government in the federal court system. According to USDA's Office of General Counsel, this team is one of few such joint litigation efforts in existence.

USDA officials cite the failure to resolve the dispute as the single significant element in the delay in collecting payments from purchasers. They said the Forest Service could neither pursue the merits of these cases nor negotiate settlements until this issue was resolved. USDA's Office of General Counsel

¹The claims court does not hold jury trials.

²15 Cl. Ct. 366 (1988).

³903 F.2d 1560 (Fed. Cir. 1990) cert. denied 111 S.Ct. 1308 (1991).

and the Department of Justice are now examining each purchaser's case to determine what action should be taken.

While this constitutional issue has been settled, many other issues that potentially hinder resolution of the individual cases are still pending. These issues include, for example,

- whether the damages were accurately calculated and
- whether the government should have allowed the contract periods to be extended so that the purchasers could harvest the timber.

Damage Calculation

Some delay has also resulted from litigation over the Forest Service's method of calculating damages owed by certain purchasers who are in default. These purchasers had bought timber in areas later designated as critical habitat for the Northern Spotted Owl. Because of this designation, the Forest Service did not, as is customary, attempt to resell timber in these areas, but instead preserved the timber to protect the owl's habitat.

The courts have ruled on this issue in the case of one timber purchaser, Hobin Lumber Company. The case began as a 1987 appeal to USDA's Board of Contract Appeals. In 1991, the Board ruled in favor of the purchaser, in part because the government had elected not to resell the timber for environmental reasons and therefore, according to the Board, had suffered no damage from the purchaser's failure to cut the timber. USDA appealed this decision to the federal circuit court.

On February 25, 1993, the federal circuit court reversed the Board's decision.⁴ The federal circuit court observed that the timber sale contract specifically provided a method of calculating damages if the purchaser defaulted and the government chose not to resell the timber. The federal circuit court held that the formula for assessing damages was enforceable against the purchaser because the purchaser had agreed to the formula by signing the contract.

Extent of Surety Companies' Liability

One case involved a determination of a surety company's liability under the terms of performance bonds taken out by timber contract purchasers. On April 1, 1985, Summit Contractors, a timber contract purchaser, brought action in claims court challenging the Forest Service's position that the company was in default on its timber harvest contract and was

⁴Madigan v. Hobin Lumber, 986 F.2d 1401 (Fed. Cir. 1993).

**Appendix II
Major Litigation on Defaulted Timber Sale
Contracts**

liable for failure to remove and pay for timber. The United States filed a counterclaim for the purchaser's failure to complete the contract and served notice on the surety company that had issued the performance bond. The surety company, Insurance Company of North America, filed a third-party complaint that incorporated by reference all of the allegations in Summit Contractors' complaint. In addition, the surety company argued that its liability could not exceed the amount of the performance bond.

On November 8, 1990, the claims court ruled that the surety company's obligation to pay arose when the purchaser defaulted on the timber contract and the government notified the surety company of the purchaser's default. It further ruled that the surety company has to pay interest to the government from the date the surety company's liability begins, even if the total exceeds the amount of the bond. The federal circuit court affirmed these rulings on December 10, 1991.⁵

⁵Insurance Company of North America v. the United States, 951 F.2d 1244 (Fed. Cir. 1991).

Forest Service's Actions and Plans to Better Protect the Government's Financial Interest

Since 1982, the Forest Service has taken a number of key actions, and plans additional actions, to better protect the government's financial interest in the awarding of timber sale contracts. This list is not intended to be all-inclusive.

Actions Taken

- April 1982 Several changes were implemented to timber sale contract provisions. These changes included (1) changing the bid guarantee to 5 percent of the advertised contract value, (2) requiring a 5-percent down payment, (3) increasing the maximum amount of the performance bond from \$200,000 to \$500,000, and (4) requiring a partial contract payment midway through the contract term.
- October 1983 Contract provisions were changed to increase the down payment from 5 percent to 10 percent.
- November 1987 Procedures for suspending and debarring purchasers were revised to better ensure that timber contracts are awarded to responsible purchasers. Default of contracts and failure to pay claims were included as reasons for suspension and debarment.
- September 1988 Additional standards were established for the Forest Service's contracting officers to use in determining whether a prospective purchaser is responsible and capable of performing a contract. These standards require an affirmative determination of responsibility, including a review of financial ability.
- Regulations and contract provisions were changed to increase the down payment for purchasers with a record of failure to perform timber sale contracts.
- December 1990 Procedures were issued to provide for market-related contract term extensions. Under these procedures a timber contract can be extended for 1 year when a drastic reduction occurs in the price of wood products. Various producer price indexes are used to determine when such price reductions have occurred.
- July 1991 Contract provisions were implemented to (1) increase the required down payment when the winning bid exceeds the advertised prices and

(2) release the down payment when 25 percent of the contract value has been received, rather than when 25 percent of the timber volume has been removed.

Regulations and contract provisions were implemented to (1) increase the midpoint payment to 35 percent of the total contract value or 50 percent of the amount bid over the advertised contract value, whichever is greater, and (2) require an additional periodic payment on longer contracts.

Planned Actions

April 1993

Policy changes were proposed to (1) remove the \$500,000 cap on performance bonds, so that maximum amounts would be equal to 10 percent of the bid value; (2) increase the bid guarantee from 5 percent to 10 percent of the contract's advertised value; (3) levy damages for repudiation of the bid in the same manner as damages are levied for failure to harvest timber; and (4) limit the use of discounted prices for early harvesting to those instances specifically approved by the Chief of the Forest Service. If approved by the Secretary of Agriculture, these changes must be submitted to the Office of Management and Budget for approval.

An advance notice of proposed policy, also drafted in April 1993, provides for the Forest Service to retain the down payment until the contract is substantially complete, establishes criteria for identifying speculative bidding, and provides for the reduction of performance bond amounts when the timber sale nears completion and the amount of the bond exceeds 100 percent of the remaining obligation.

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Related GAO Products

Forest Service Timber Sales Program: Questionable Need for Contract Term Extensions and Status of Efforts to Reduce Costs (GAO/T-RCED-92-58, Apr. 28, 1992).

Forest Service Needs to Improve Efforts to Protect the Government's Financial Interests and Reduce Below-Cost Timber Sales (GAO/T-RCED-91-42, Apr. 24, 1991).

Federal Timber Sales: Legislative and Administrative Assistance Provided to Timber Purchasers (GAO/RCED-89-117, Apr. 21, 1989).

National Forests: Financial Ability Reviews of Prospective Timber Purchasers Need Improvement (GAO/RCED-89-110, Mar. 31, 1989).

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