

**Standard Provisions
Lump Sum Timber Sale
Contract
Form 5450-3**

Sections 1 – 42

Introduction to the Conference Calls

- Conference calls will be held on the (2nd Wednesday) of each month until each of the provisions are discussed.
- We have 3 presenters that will be presenting the sections. They are:
 - Vince Randall – Grants Pass Field Office, Medford District in Oregon
 - Werner Krueger – Swiftwater Field Office, Roseburg District in Oregon
 - Mike Bechdolt – Klamath Falls Field Office, Lakeview District also in Oregon.

Welcome to the discussion we are going to have on the Standard Provisions of the BLM Timber Sale Contract. These conference calls will be held on the (2nd Wednesday) of each month until each of the provisions are discussed.

We have 3 presenters that will be presenting the sections. They are:

Vince Randall – Grants Pass Field Office, Medford District in Oregon

Werner Kruger – Swiftwater Field Office, Roseburg District in Oregon

Mike Bechdolt – Klamath Falls Field Office, Lakeview District also in Oregon.

Introduction to the Conference Calls

- We will discuss each section of the contract and we will go in order Section 1 – Section 42.
- As we discuss each section there will be time for questions
- Each of the calls will be recorded by the National Training Center and will be available on the NTC Knowledge Resource Center.
- Are there any questions about the format?

In these calls we will discuss a section of the contract and we will go in order Section 1 – Section 42.

There will be time for questions

Each of the calls will be recorded by the National Training Center and put on Knowledge Resource Center so it can be viewed later.

Are there any questions?

Ground Rules

- Active Listening – get involved
- Approximately an hour – with break
- If in loud environment, consider mute button
- This ain't Hollywood
- Any others??

For this format to work, you really need to get involved. Share your opinions and experiences

We'll try to keep this session to about an hour and we'll take a short 5 minute break half way through this session

If your office environment gets a bit noisy for some reason, consider using the mute button on your phone until things clear, however, don't check out of the discussions because your involvement is important.

What else are we forgetting?

Ok, then, let's get on with things...

Other Info

- New & revised contract forms will be out soon – IM in routing
- Slides have the new contract language
- Changes for the 1990 version are in **RED** text
- Feel free to disagree or bring up scenarios
- If a question cannot be answered it will be researched and discussed in the next call

List of Sections for today

- Preamble
- Section 1 – Timber Sold
- Section 2 – Total Purchase Price
- Section 3 – Payment
- Section 4 – Time for Cutting and Removal
- Section 5 – Definitions
- Section 6 – Inspection of Timber and Disclaimer of Warranty
- Section 7 – Passage of Title and Risk
- Section 8 – Sales of Additional Timber
- Section 9 – Extension of Time and Reappraisal
- Section 10 – Violations, Suspensions, and Cancellations

If things go according to plans, we will try to cover the following sections today:

******i don't think we'll read these, but just pause to allow participants to digest this slide – maybe 10 seconds ******

Introduction

- Traditional contract forms
 - **5450-003 - Contract for the Sale of Timber – Lump Sum**
 - **5450-004 - Contract for the Sale of Timber – Scale Sale**
- New Contract Forms
 - 5450-025 - Contract for Sale of Timber and Wood Products - Lump Sum
 - 5450-026 - Contract for Sale of Timber and Wood Products – Scale Sale

Werner Kruger

Let's begin with an explanation of the 4 timber sale contract forms.

The traditional contracts used to sell timber are

5450-3 (Contract for the Sale of Timber – Lump Sum)

5450-4 (Contract for the Sale of Timber – Scale Sale)

These are only for the sale of timber.

*******Hit Enter*******

Introduction

- Traditional contract forms
 - 5450-003 - Contract for the Sale of Timber – Lump Sum
 - 5450-004 - Contract for the Sale of Timber – Scale Sale

- **New Contract Forms**
 - **5450-025 - Contract for Sale of Timber and Wood Products - Lump Sum**
 - **5450-026 - Contract for Sale of Timber and Wood Products – Scale Sale**
 - Wood Products - includes timber and other woody material not normally measured in board feet.
 - Biomass, fuelwood, posts and poles, and timber.
 - Not for other forest products such as Christmas trees seeds and mushrooms.

Werner Kruger

Two new forms available March 2012 are

5450-025 - Contract for Sale of Timber and Wood Products - Lump Sum

5450-026 - Contract for Sale of Timber and Wood Products – Scale Sale

*****Hit Enter*****

Introduction

- Traditional contract forms
 - 5450-003 - Contract for the Sale of Timber – Lump Sum
 - 5450-004 - Contract for the Sale of Timber – Scale Sale

- New Contract Forms
 - 5450-025 - Contract for Sale of Timber and Wood Products - Lump Sum
 - 5450-026 - Contract for Sale of Timber and Wood Products – Scale Sale
 - **Wood Products - includes timber and other woody material not normally measured in board feet.**
 - **Biomass, fuelwood, posts and poles, and timber.**
 - **Not for other forest products such as Christmas trees seeds and mushrooms.**

Werner Kruger

These are for the sale of both Timber and other Wood Products using different forms of volume determination (i.e. Timber in MBF and Biomass in Green tons/Acre). The definition of Wood Products is - includes *timber* and other woody material not normally measured in board feet. These contract forms are for the sale of wood products generated from trees such as biomass, fuelwood, posts and poles, and timber. They are not to be used to sell other forest products such as Christmas trees seeds and mushrooms.

Again - the -3 and -4 contracts provide only for the sale of timber sold in MBF where the -25 contract provides for the sale of both timber and other Wood Products using different forms of v

Volume determination (i.e. Timber in MBF and Biomass in Green tons/Acre), sold by Lump Sum on one contract.

*****Hit Enter*****

Preamble

THIS CONTRACT is made and entered into the day of _____, 20____, under the authority of the Act of August 28, 1937, (50 Stat. 874), as amended, (43 U.S.C. 1181a-f), relating to the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands, or under the Act of July 31, 1947, (61 Stat. 681), as amended, (30 U.S.C. Secs. 601-604), relating to other lands under the jurisdiction of the Bureau of Land Management (BLM), and the regulations as set forth in 43 CFR Group 5400, between the UNITED STATES OF AMERICA, hereinafter called the Government, acting through the BLM, and _____ of _____ hereinafter called the Purchaser.
WITNESSETH, That the parties hereto do mutually agree as follows:

Mike Bechdolt

The preamble is the opening statement of the contract. It establish the parties to the contract, the date the contract is made and entered into, and the laws and regulations which authorize the action. It sets the stage for agreement to the conditions of the contract.

Note: Throughout these discussions, those areas of the contract provisions highlighted in red are new or updated as a result of recent changes to the contract forms

*****Hit Enter*****

Preamble

THIS CONTRACT is made and entered into the day of _____, 20____, under the authority of the Act of August 28, 1937, (50 Stat. 874), as amended, (43 U.S.C. 1181a-f), relating to the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands, or under the Act of July 31, 1947, (61 Stat. 681), as amended, (30 U.S.C. Secs. 601-604), relating to other lands under the jurisdiction of the Bureau of Land Management (BLM), and the regulations as set forth in 43 CFR Group 5400, between the UNITED STATES OF AMERICA, hereinafter called the Government, acting through the BLM, and _____ of _____ hereinafter called the Purchaser.

WITNESSETH, That the parties hereto do mutually agree as follows:



Mike Bechdolt

The contract form provides a space for entry of the name and address of the Purchaser. It is important to properly identify the Purchaser. In the case of a corporation, the name should appear in the contract in the exact manner of use as established by the company. If more than one individual is the Purchaser, each name must appear in the space provided. Assumed business names (i.e. Doing Business As - DBA in TSIS v.5.0) may be shown but it is most important that all individuals are included. If the Purchaser is a partnership or Limited Liability Corporation (a form of partnership), the names of all parties must be listed as well as the name of the firm under which they are doing business (DBA). The address of the Purchaser is entered following the name of the Purchaser.

*****Hit Enter*****

Preamble

Date of 1st Letter



THIS CONTRACT is made and entered into the day of _____, 20__ ,
under the authority of the Act of August 28, 1937, (50 Stat. 874), as
amended, (43 U.S.C. 1181a-f), relating to the revested Oregon and
California Railroad and reconveyed Coos Bay Wagon Road grant lands, or
under the Act of July 31, 1947, (61 Stat. 681), as amended, (30 U.S.C.
Secs. 601-604), relating to other lands under the jurisdiction of the Bureau
of Land Management (BLM), and the regulations as set forth in 43 CFR
Group 5400, between the UNITED STATES OF AMERICA, hereinafter
called the Government, acting through the BLM, and
of
hereinafter called the Purchaser.
WITNESSETH, That the parties hereto do mutually agree as follows:

Mike Bechdolt

The date the contract (first line) is made and entered into (award date) has its own special significance. This date is the specific date upon which an offer made by the Purchaser is accepted by the Government. The Purchaser makes a formal offer on the date of the sale. The Government formally accepts the bid when the Contracting Officer awards the contract thus notifying the bidder of such acceptance in writing (1st Letter). It is incorrect to use the sale date as the date of the contract unless the formal acceptance letter is mailed to the Purchaser on the sale date.

Ask: How does this date differ from the approval date of the contract?

Answer: A contract is formed (made) when the Purchaser signs the contract and at that point both parties are entitled to the rights and benefits intended under the contract. **The approval date is the date upon which the Contracting Officer signs the contract on behalf of the Government.** The approval date is important because time elements of the contract are measured from the approval date.

Ask: Why is this date – the date the contract is made important to the Purchaser?

Answer: It establishes the date of purchase within the Internal Revenue Code. Use of an improper date may cause a disservice to the Purchaser and create additional tax burdens for the Purchaser.

Ask: For negotiated sales, the date the contract is made and entered into is the date the Purchaser signs the contract, if the signing takes place in the District Office. What date would you use in the event the contract is transmitted to the Purchaser for signature?

Answer: the date of the contract used is the date of the transmittal letter (*1st Letter*).

*****Hit Enter*****

Section 1 – Timber Sold

Sec. 1. Timber Sold

The Government hereby sells to the Purchaser and the Purchaser hereby buys from the Government, under the terms and conditions of this contract, all timber **included in Exhibit B, which is attached hereto** and made a part hereof, except that **timber** reserved to the Government under Sec. 41 of this contract, within the area designated by the Government, comprising contract area **as shown on map marked Exhibit A, which is attached hereto and made a part hereof**, and situated in the County of _____, State of _____, and described as follows:

Vince Randall

Section 1 of the contract establishes that the **Government sells** and the **Purchaser buys** certain timber/wood products subject to the terms and conditions of the contract.

Exhibit B describes the timber sold in the contract. It should include the species, estimated volume or quantity, price per unit, total value, and apportionment of the total value into the sale units.

Section 1 of the contract also specifies that the general location of the contract area be shown on a map which is identified as **Exhibit A**. The Exhibit A is attached to and becomes a part of the contract.

ASK: Does every contract have to have an Exhibit A map showing the contract area?

The contract map generally consists of a topographic map (usually at a scale of 1 inch to 1,000 feet) showing the lands, improvements, and cutting areas

comprising the contract area. It is important that the map be a reasonably accurate representation of the ground conditions and adequately portrays the contract terms. The boundaries of the contract area described in the legal description must be shown on the map.

Section 1 requires that the location of the timber/wood products be described in the body of the contract by **legal description** (township, range, section, and subdivision), including identification of county and State. Lands thus described comprise the contract area. Standard procedure for listing legal descriptions is to list township and range in ascending numerical order, followed by the section and subdivisions of the section. List lots by lot number first, then the quarter section and 40-acre subdivisions in counterclockwise order commencing with the NE $\frac{1}{4}$ NE $\frac{1}{4}$.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Exhibit B

Modified
Dewapwood
75 09-11

The following estimates and calculations of timber sold are made solely as an administrative aid for determining: (1) Adjustments made or credits given in accordance with Sections 6, 9, or 11; (2) Volume payments are due; and (3) Value of timber subject to any special bonding provisions. The value of timber will be determined by multiplying the value per acre as shown below, times the amount of acreage as determined by the authorized officer, which has been cut or removed or designated for taking.

Except provided in Section 2, Purchaser shall be liable for the total purchase price even though the quantity of timber actually cut or removed or designated for taking is less than the estimated volume or quantity shown. Cutting areas are shown on the Exhibit A.

Sale Totals (16 MBF)

Species	Net Volume	Bid Price	Sale Subtotal
Douglasfir	2,117	\$141.20	\$300,196.40
White Fir	152	\$29.90	\$4,545.20
Western Hemlock	90	\$24.10	\$2,169.00
Incensecedar	16	\$272.20	\$4,355.20
Fraser Fir	0	\$24.70	\$0.00
Sale Totals	2,475		\$311,765.80

Unit Details (16 MB)

Unit 23-1A 58 Acres Value per Acre: \$2,062.13

Species	Net Volume	Bid Price	Species Value
Douglasfir	227	\$141.20	\$32,052.40
Incensecedar	9	\$272.20	\$2,449.80
Fraser Fir	1	\$24.70	\$24.70
White Fir	74	\$29.90	\$2,202.60
Unit Totals	311		\$34,729.50

Unit 23-1B 14 Acres Value per Acre: \$1,758.74

Species	Net Volume	Bid Price	Species Value
Douglasfir	100	\$141.20	\$14,120.00
Incensecedar	2	\$272.20	\$544.40
Fraser Fir	0	\$24.70	\$0.00
White Fir	0	\$29.90	\$0.00
Unit Totals	102		\$14,664.40

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT (BLM)

CONTRACT NO. 0100-10-015
SALVAGE: SALVAGE LOG
ASSURANCE: RANGE ASSURANCE

**EXHIBIT B
SCALE SALE
PURCHASE PRICE SCHEDULE AND MEASUREMENT SPECIFICATIONS**

I. **Total Actual Purchase Price** - In accordance with Section 3 (d) of the contract, the Purchaser agrees to pay the Government for the timber sold under the contract in accordance with the following schedule and measurement requirements. Timber sold is comprised of Merchantable Lumber, Merchantable Lumber Resawing, and Other Lumber as defined below. In the event an Extension of Time is approved, the prices per measurement unit are subject to readjustment (refer to Section 9 of the contract).

Schedule of Species, Measurement Units, and Prices		
Species	Measurement Unit	Price per Measurement Unit
Merchantable Logs - Douglas-fir and other	3,333 MBF	\$159.50
Utility Logs	MBF	Not Applicable

II. **Merchantable Timber** - All timber which can be cut into logs, which equal or exceed the following specifications, shall be considered merchantable timber. Purchaser shall pay for same in accordance with Sec. 9 of the contract at the unit prices shown in Section I of this Exhibit.

Schedule of Minimum Material Specifications			
Species and Products	Length	Diameter (inside bark at small end)	Net Scale
All Species	8 feet	5 inches	33 1/3% of gross volume of any log segment

III. **Merchantable Timber Resawing - Measurement Requirements** - The resawing volume of any merchantable solid timber on the contract area shall be determined as provided in Section 3 (e) of the contract. Purchaser shall pay for same in accordance with Sec. 9 of the contract at the unit prices shown in Section I of this Exhibit. To maximize utilization, the Purchaser shall buck logs to variable lengths. If the Purchaser fails to buck logs to variable lengths, the Contracting Officer may measure unyarded log segments and bill the Purchaser for their value. Under no circumstances will the Purchaser be allowed to cut preferred lengths only.

IV. **Scaling**

A. **Log Rule and Measurement** - All logs shall be scaled according to the eastside scribner log rules found in the Northwest Log Rules Bookside and Westside Log Scaling Handbook in the Official Rules for Log Scaling and Grading Business developed by the Northwest Log Rules Advisory Group dated June 1, 2006. A Scaling Authorization must be completed prior to beginning of operations. The Contracting Officer may elect to utilize sample scaling in lieu of 100 percent scaling of log loads. The sample log scaling procedures, including sample design and number of log sorts, will be determined by the Authorized Officer in accord with Standard EDM methods.

Lists merchantable timber specifications and price per mbf. Logs must be bucked to variable lengths, not necessarily to preferred lengths. Scaled to eastside scribner rules. Scaling authorization and yard scale agreement must be filled out prior to beginning of operations. Set check scale standards. Log accountability standards are listed. Merchantable timber volume and value removed and not removed from the sale area are tracked and reconciled at the end of the sale. Overnight load control record is included for breakdowns

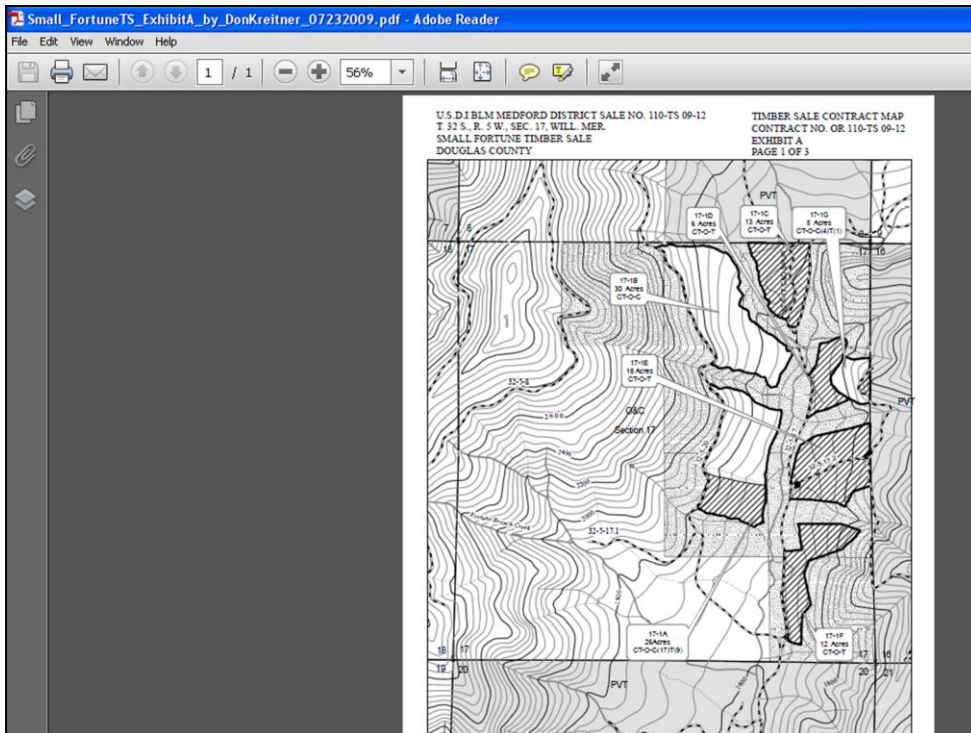


Exhibit A for Small Fortune TS

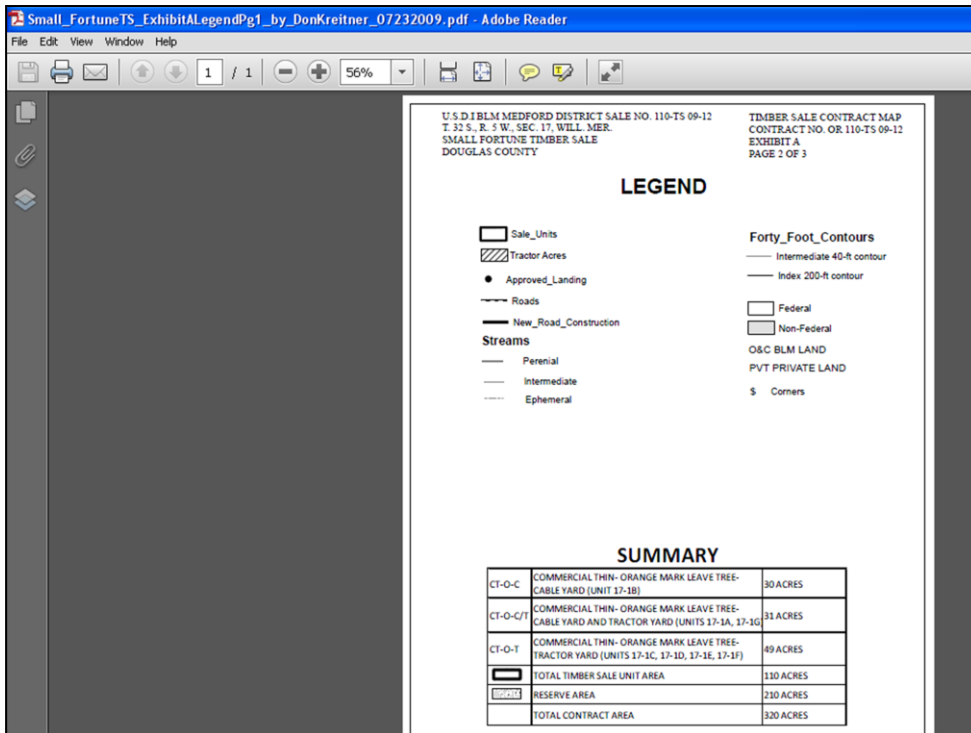
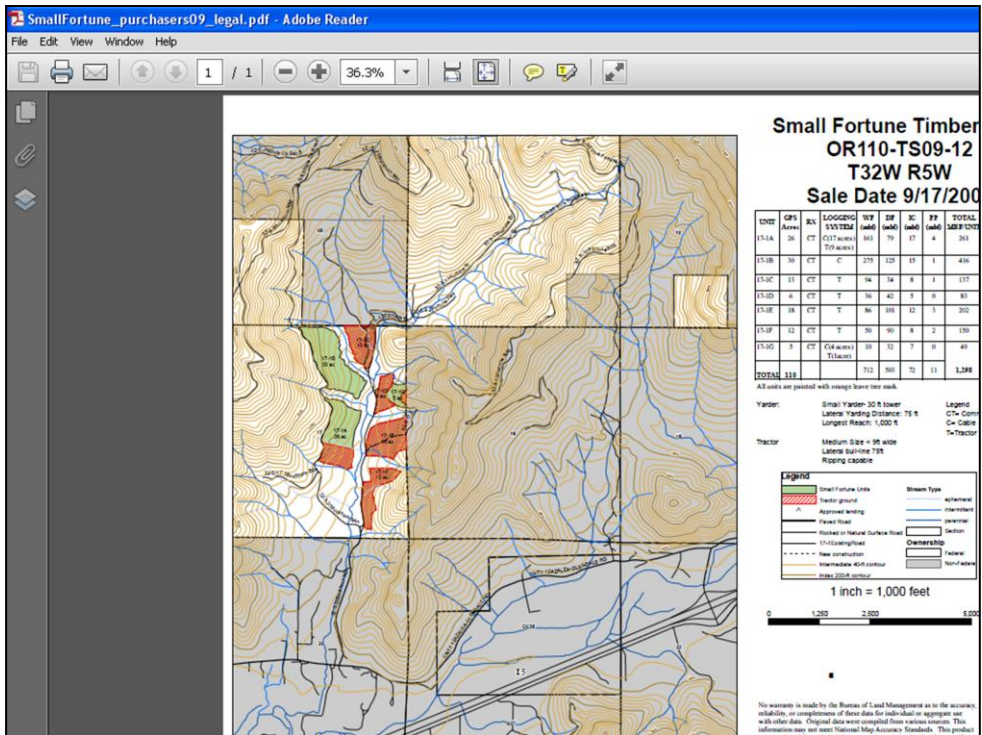


Exhibit A legend



Purchaser Map. All units on one map with volumes by species and unit information. Also contains logging systems, prescription, paint mark, acres and any special notes on a unit.

Sec. 2. Total Purchase Price

The Purchaser agrees to pay Government, as the total purchase price for the timber sold hereunder, the sum of



dollars (); *Provided, however,* that such total purchase price may be adjusted in accordance with Secs. 6, 7, 8, 9, 19, 20, or **42** of this contract.



Werner Kruger

Section 2 of the contract establishes the total purchase price which the Purchaser agrees to pay the Government for the timber/wood products sold pursuant to the terms and conditions of the contract. The total purchase price is the amount bid by the Purchaser. It is expressed in the contract in both words and figures in the spaces provided in Section 2, and must correspond to the total value in Exhibit B. The purchase price must agree with information on Form 5440-009, Deposit and Bid for Timber/Wood Products, which is written confirmation of the Purchaser's bid, as illustrated in H-5440-1, Conduct of Sales.

Ask: So what's the difference between a lump sum contract and a contract sold on a scale or unit basis?

Answer: A contract executed on Form 5450-003/025 is a "lump-sum" contract. A "lump-sum" contract requires payment of a fixed dollar amount, regardless of the quantity of timber/wood products involved. This contrasts to a contract on a "scale" or "unit" basis where the total payment is dependent upon a measure of the quantity of timber/wood products actually removed.

Sec. 2. Total Purchase Price

The Purchaser agrees to pay Government, as the total purchase price for the timber sold hereunder, the sum of

dollars (); *Provided, however,* that such total purchase price may be adjusted in accordance with Secs. 6, 7, 8, 9, 19, 20, or 42 of this contract.

➤ **Under Sections 6, 7, 19 and 41, the adjustment is downward**

6 – Inspection of Timber and Disclaimer of Warranty

7 – Passage of Title and Risk

19 – Cost Adjustment for Physical Change

42 – Special Provisions

➤ **Under Sections 8 and 9, the adjustment is upward.**

8 – Sales of Additional Timber

9 – Extension of Time and Reappraisal

➤ **Under Section 20, the adjustment can be in either direction.**

20 – Design Change

Werner Kruger

The total purchase price may be adjusted in accordance with certain sections of the contract. These sections of the contract provide the authority to adjust the total purchase price.

Ask: Can the price be adjusted just because the purchaser is dissatisfied with the amount or quality of volume that they actually harvest?

Answer: There is no authority to adjust the total purchase price or Exhibit B volume because the purchaser is dissatisfied with the amount or quality of volume that they actually harvest (unless there is a failure of title; see Section 6); to do so undermines the validity of the subject contract and other lump sum contracts.

Ask: What if there is some extra timber that we want harvested and the purchaser is willing to cut and haul it but doesn't feel they should have to pay for it?

Answer: Additionally, there is no authority to add volume (mark additional

timber) at no price; additional volume must be sold to the Purchaser at fair market value.

We can see here the sections mentioned in Section 2 that may affect Purchase Price: ~~The discussion under the appropriate sections should be reviewed, in addition to the following:~~

Under Section 6, Inspection of timber/wood products and Disclaimer of Warranty, part (b), adjustments would be downward if there is a failure of title to any of the timber/wood products sold.

Under Section 7, Passage of Title and Risk of Loss, adjustments would be downward in the event of timber/wood products losses, particularly damage to timber/wood products for which the Government bears the risk of loss.

Under Section 19, Cost Adjustment for Physical Changes, adjustments would be downward in use of this option as a method for Government to share the Purchaser's cost of repairing major damage which occurs to required road construction prior to acceptance of the completed construction.

Under Section 42, Special Provisions, adjustments would be downward in the event of delay due to check scaling by the Government when that special provision has been included in the contract.

Under Section 8, Sales of Additional Timber/Wood Products, adjustments would be upward following sales (contract modifications) of additional timber/wood products to the contract.

Ask: WHAT ABOUT TIMBER THAT IS REMOVED FROM THE CONTRACT?

Under Section 9, Extension of Time and Reappraisal, adjustments would be upward in the event of increase in value of the remaining timber/wood products following reappraisal for contract extension.

Under Section 20, Design Change, adjustments would be either downward or upward in the event of a necessary, substantial road design change.

Section 3 – Payment

This section is divided into ten (10) subsections which relate to the payment for total purchase price as found in Section 2. I will cover each of these subsections separately and in order.

Mike Bechdolt

Section 3 (a) – Payment

Sec. 3. Payment

(a) Payment under this contract shall be made as set forth in this section. No timber may be cut or removed until the required payments have been made. Purchaser shall continue to make such payments until the total purchase price has been paid. The total purchase price shall be paid no later than the expiration of time for cutting and removal as set forth in Sec. 4.

Mike Bechdolt

Section 3(a) introduces the whole of Section 3 stating payment must be made prior to the cutting and removal of timber/wood products. Section 3(a) requires that the total contract purchase price must be paid prior to the expiration of the time for cutting and removal of timber/wood products expressed in the contract. This means that the contract, to be in good standing, must be paid in full on or before the date the contract expires. If a contract extension has been applied for and the contract duly extended, the total purchase price then becomes due prior to expiration of the contract as extended. This requirement is included in the contract to set forth a specific date during the life of the contract when the total purchase price must be paid in full.

Question: If the purchaser has a payment bond, and considering the bond represents “payment,” and harvest operations finish on, or less than 30 days before the expiration of cutting and removal rights, **CAN** the actual billing and payment may occur after the expiration date?

Section 3 (a) – Payment

43 CFR 5450.3

5450.1

5450.2

- For sales greater than (>) \$500, installments (payments) are permitted.
- For sales less than (<) \$500, payment in full is required prior to the Contracting Officer signing of the contract (Approval).

Mike Bechdolt

43 CFR 5461.3 requires the total purchase price to be paid prior to expiration of the time for cutting and removal under the contract. Non-payment of said is a default of the contract and 43 CFR 5450.1 identifies a purchaser who has defaulted on a contract for failure to pay by the expiration date as a risk for purposes of being awarded future timber/wood products sale contracts. 43 CFR 5450.1 further prescribes the possible consequences to a purchaser in default in terms of establishing bidder responsibility by additional payments or bonding in order to be awarded a new sale.

Question: Does anyone know what those consequences are?

If the total of the timber/wood products purchased is \$500 or more in value, 43 CFR 5452.2 permits payment by installments. This regulatory requirement is brought forward into Section 3(b) of the contract. Sales for under \$500 must be paid in full prior to the time the Contracting Officer signs (approves) the contract.

Section 3 (b) – Payment

Sec. 3. Payment (con't)

(b) Unless total purchase price is paid on or before the date this contract is signed by the Contracting Officer, payments shall be made in installments of not less than **write in the total purchase price** dollars (\$XX,XXX,XX) as follows: (1) The first installment shall be paid on or before the date this contract is signed by the Contracting Officer, one-half of this first installment may be applied as payment on the total purchase price when (i) no less than 60 percent of the total purchase price has been paid or (ii) road construction required under the contract has been completed the value of which when combined with contract payments is equal to no less than 60 percent of the total purchase price, and one-half of this first installment shall be held to satisfy the final payment due under this contract; (2) *except* as provided by subsections (e) and (f) of this section, a second installment shall be paid prior to cutting or removal of any timber sold under this contract. Each subsequent installment shall be due and payable without notice when the value of the timber cut or removed equals the sum of all payments not including the first installment or one-half of the first installment after one-half of the first installment has been released as provided in subsection (b)(1) of this section; (3) *Provided, however*, that in the case of all contracts with a nineteen (19) month or longer term, the Purchaser shall be required by the first anniversary date to either (i) pay no less than 20 percent of the total purchase price or (ii) complete road construction required under the contract the value of which when combined with contract payments is equal to no less than 20 percent of the total purchase price; (4) *Provided further*, that in the case of contracts with a twenty-seven (27) month or longer term, the Purchaser shall also be required by the second anniversary date to either (i) pay no less than 40 percent of the total purchase price or (ii) complete road construction required under the contract the value of which when combined with contract payments is equal to no less than 40 percent of the total purchase price.

Mike Bechdolt

Section 3 (b) – Payment

Each subsequent installment shall be due and payable without notice when the value of the timber cut or removed equals the sum of all payments not including the first installment or one-half of the first installment after one-half of the first installment has been released as provided in subsection (b)(1) of this section; (3) *Provided, however*, that in the case of all contracts with a nineteen (19) month or longer term, the Purchaser shall be required by the first anniversary date to either (i) pay no less than 20 percent of the total purchase price or (ii) complete road construction required under the contract the value of which when combined with contract payments is equal to no less than 20 percent of the total purchase price; (4) *Provided further*, that in the case of contracts with a twenty-seven (27) month or longer term, the Purchaser shall also be required by the second anniversary date to either (i) pay no less than 40 percent of the total purchase price or (ii) complete road construction required under the contract the value of which when combined with contract payments is equal to no less than 40 percent of the total purchase price.

Mike Bechdolt

Section 3 (b) – Payment

- Sets minimum installment payment expressed in both words and figures.
 - Normally 10% of purchase price but no more than \$50,000.
- Specifies that the first installment must be paid on or before the date the contract is signed by the Contracting Officer.
- Successful bidder required to sign and return contract, along with any required performance bond and payment, within a 30-day period.
- After 60% of the contract has been paid, including road construction credits, 1/2 of the 1st installment can be applied (**earned**) as payment.

Mike Bechdolt

Section 3(b) provides space for setting forth the amount of the minimum installment payment. ~~This amount varies with the total value of the contract. The regulations in 43 CFR 5461.2(a) establish the minimum amount of installments based upon the value of the contract.~~ The amount of the individual installment is expressed in both words and figures. Section 3(b) prescribes the sequence of installment payments. It specifies that the first installment must be paid on or before the date the contract is signed by the Contracting Officer. The first installment must be paid within the time provided after the Purchaser receives the contract for signature. The successful bidder is required by regulation to sign and return the contract, together with any required performance bond and payment, within a 30-day period unless additional time is provided (~~see 43 CFR 5450.1(b).~~) Failure of the successful bidder to comply with these requirements within the stipulated time may result in forfeiture of the bid deposit.

Section 3(b) provides that one-half of the first installment will be applied as payment on the total purchase price when no less than 60 percent of the total purchase price is paid, or road construction required under the contract has been completed the value of which when added to the payments made is equal

to no less than 60 percent of the total purchase price. *TSIS 5.0 will do this automatically when the payments reach 60% of the contract price.* The other half of the first installment will be held to satisfy the final payment on the contract.

Section 3 (b) – Payment

- Upon payment of 2nd installment, Purchaser can cut an amount of timber equal to that installment. At that point the third installment is then due, etc.
- Installment payments are due and payable without notice.
- Exhibit B (or Ticket Tracker for scale sales) are used for determining when payments are due.
- Establishes anniversary payments requirements
 - Depending upon the length of the contract, certain percentages of the total purchase price are to be paid by the anniversary date(s) of the contract.
 - Value of completed road construction, based upon BLM appraisal allowances, will count toward these payments.

Mike Bechdolt

Section 3(b) requires that the second installment must be paid prior to the cutting or removal of any timber/wood products sold under the contract, except as provided in Sections 3(e) and 3(f). Upon payment of the second installment, the Purchaser may cut an amount of timber/wood products equal to that of a single installment. At that point the third installment payment is due. The installment payments continue in like manner until all payments have been made.

Installment payments according to Sec. 3(b) are due and payable without notice whenever the value of the Timber/Wood Products cut equals the sum of all payments not including the first installment, or half of the first installment when half of the first installment has been released as provided in section 3(b)(1). As a practical matter, however, the Authorized Officer must perform frequent inspections of the contract to assure that installment payments are timely. Exhibit B (or ticket tracker) are used for determining when payments are due (~~see Illustration 4.~~)


In the case of contracts with a term of 19 months or longer, no less than 20

percent of the total purchase price shall be paid by the first anniversary date. In the case of contracts with a term 27 months or longer, no less than 40 percent of the total purchase price, must be paid by the second anniversary date of the contract. The value of completed road construction, based on BLM's appraisal allowance, will be applied as credit toward these payment requirements. Note the underlined terms several paragraphs above, i.e., "applied as payment" and "held to satisfy." The first installment is not considered payment until it is applied (earned) as payment, and as such is not consider "paid" for purposes of determining how much has been paid towards satisfying the aforementioned 20 and 40 percentages of the total purchase price. *TSIS 5.0 will notify the contract administrator and calculate the amount due for anniversary payments.*

Section 3 (c) – Payment

Sec. 3. Payment (con't)

(c) Notwithstanding the provisions of subsection (b)(1) of this section, the amount of the first installment may be reduced by the Government when the Contracting Officer requests the Purchaser to interrupt or delay operations for a period expected to last more than thirty (30) days during the operating season. Such interruption or delay must be beyond the Purchaser's control. **The first installment may be reduced to 5 percent of the installment amount** specified in subsection (b) of this section, during the delay period. The Purchaser must **request such a reduction in writing**. When the Contracting Officer notifies the Purchaser that operations may proceed, the **Purchaser shall have fifteen (15) days after such notification** to restore the first installment to the value specified in subsection (b) of this section. Failure to restore the first installment within the allotted time will be considered a material breach of contract. No timber shall be cut or removed from the contract area until the first installment is restored.



Note: Refunds can take 4-6 weeks

Mike Bechdolt

Section 3(c) provides for reduction of the first installment to five percent of the installment amount listed in subsection (b) should the Contracting Officer request the Purchaser to interrupt or delay operations for a period expected to last more than 30 days during the operating season. Such interruption or delay must be beyond the Purchaser's control. The Purchaser must request such a reduction in writing. When the Purchaser has been notified that operations may resume, they must restore the first installment to the full value specified in subsection (b) within 15 days. Non-payment would be considered a breach of contract. No timber/wood products may be cut or removed from the contract area until the first installment is restored.

Note: Refunds can take 4-6 weeks

TSIS 5.0 will create a bill for re-instatement of the 1st installment.

Section 3 (d) - Payment

Sec. 3. Payment (con't)

(d) Notwithstanding the provisions of subsections (b)(3) and (b)(4) of this section, adjustments in the due dates for anniversary payments may be made by the Government if the Contracting Officer interrupts or delays contract operations for a period expected to last at least thirty (30) days, and the interruption or delay **is beyond the Purchaser's control**. Any adjustment made to the due dates for anniversary payments will be **commensurate with the extension of operating time** granted in accordance with Sec. 9. The Purchaser **shall request such adjustment in writing before the due date** for an anniversary payment contained in subsections (b)(3) and (b)(4) of this section.

Mike Bechdolt

Section 3(d) provides for adjustments in anniversary payment due dates if the Contracting Officer interrupts or delays contract operations for a period expected to last at least 30 days, and the interruption or delay is beyond the Purchaser's control. Any adjustment made shall provide the Purchaser with an equal amount of operating time prior to the beginning of the delay as would have been available without the delay. The Purchaser shall request such adjustment in writing before the due date for an anniversary payment.

ASK: Can anyone provide A PRACTICAL EXAMPLE where an extension of time was granted?? Be prepared to answer this with an example...

Mutual cancellation contracts, Litigation, Suspension due to fire closures, new owl site restrictions,

Section 3 (e) - Payment

(e) If Purchaser increases the performance bond as permitted by Sec. 39(b), cutting of timber of a value not in excess of the increase in value of such bond may be permitted prior to the payment of the second installment or subsequent installments; *Provided, however,* that no timber may be skidded, yarded, or otherwise transported to a loading point or removed from the contract area prior to payment of any installment which, but for provisions of this subsection, would otherwise be due under the provisions of Sec. 3(b).

Mike Bechdolt

Ask: has anyone seen where this contract provision has come into play??

Why did the purchaser use this? What's the benefit?

Section 3 (e) – Payment

- This deals with the “Cut-but-not-remove” bonding procedure.
 - Accomplished by purchaser increasing its performance bond.
- This is an effective and beneficial method when the Purchaser wishes to cut a quantity of timber in advance of removal.
- Purchaser can elect to use this procedure at any time.
- When the Purchaser elects to cut against the bond, he:
 - Informs the Contracting Officer of approximate value of timber he wants to cut in advance;
 - Arranges with the bonding company to increase the Performance Bond by that amount. Increased Performance Bond is government’s protection for cutting in advance.

Mike Bechdolt

Section 3(e) ~~makes effective the provisions of 43 CFR 5451.2 and 43 CFR 5461.2(b) which~~ permit the cutting of timber/wood products in advance of payment of the second and subsequent installments under what is commonly referred to as the “cut-but-not-remove” bonding procedure. Section 3(e) and Section 39(b) are closely related and should be studied together.

This “cut-but-not-remove” procedure established by Section 3(e) is effective and beneficial in contracts where the Purchaser wishes to cut a quantity of timber/wood products well in advance of yarding. Use of this procedure permits the Purchaser to conserve operating capital because they do not have to make installment payments to permit cutting of the timber/wood products; instead, payments are made in advance of skidding or yarding to a loading point (refer to Section 5) or removal. The Purchaser may elect to use this procedure at any time.

When the Purchaser elects to cut timber/wood products against the bond, the Purchaser informs the Contracting Officer of the approximate amount (value) of timber/wood products they wish to cut in advance of payment. The Purchaser

must then arrange with the bonding company to increase the performance bond by that amount, in installment increments (see 43 CFR 5451.2, and use Form 5460-3, Increase or Decrease Rider—Performance Bond.)

~~Payment for the felled timber/wood products commences when the Purchaser decides to skid or yard, or remove, to a loading point, or remove the timber/wood products cut under the “cut-but-not-remove” procedure. Upon payment of the second installment, the Purchaser may skid or yard to a loading point or remove timber/wood products in an amount equal in value to the second installment. The third installment payment becomes due at this point and so on until all installment payments have been made.~~

-

~~The Purchaser in this example must cease cutting timber/wood products when the value of the timber/wood products cut in advance of payment equals \$40,000, i.e., the amount of the increase in the performance bond. In order to continue cutting in advance of payment, the Purchaser must begin making installment payments or increase the bond to a greater amount. Upon payment of an installment, the Purchaser may skid or yard to a loading point or remove timber/wood products in an amount equal to the amount paid. Payment also has the effect of advancing or reinstating the bond permitting the Purchaser to cut an additional \$10,000 of timber/wood products.~~

The Purchaser may revert back to the payment in advance of cutting procedure (Section 3(b) of the contract) at any time during the life of the contract.

Section 3 (e) - Payment

- Example
- Contract has a
 - \$100,000 purchase price
 - 10,000 installments
 - \$20,000 performance bond
- Purchaser want to cut \$36,000 of timber.
- The performance bond need to be increased by \$40,000 to a total of \$60,000

For example, assume a contract with a total purchase price of \$100,000, installment payments of \$10,000, and a basic performance bond requirement of \$20,000. The Purchaser in this example wishes to cut timber/wood products in advance of payment up to an amount of \$36,000, it will be necessary to increase the basic performance bond by \$40,000. Thus the total value of the performance bond required in this situation is \$60,000. The increased bond is the Government's protection for cutting in advance of payment. Upon submission of a bond in this amount and written approval of the increased bond by the Contracting Officer, the Purchaser may cut timber/wood products in advance of payment up to an amount \$40,000. The Purchaser may not, however, skid or yard to a loading point, or remove any of the timber/wood products cut pursuant to this procedure, until payment has been made.

Section 3 (f) – Payment Bond

(f) If Purchaser provides a payment bond, as permitted by Sec. 39(d), cutting and/or removal of timber of a value not in excess of the penal sum of such bond may be permitted prior to the payment of the second installment or subsequent installments. Unless a shorter period is agreed to by Purchaser and Government, Government shall bill Purchaser monthly for timber skidded, yarded, or otherwise transported to a loading point or removed from the contract area. Such billing shall include any amount due for related road maintenance fees and other charges required under this contract. Purchaser shall make payment within fifteen (15) days of the billing date shown on the billing form.

Mike Bechdolt

Section 3 (f) – Payment Bond

- In effect, a guaranteed cash payment for timber cut.
- The minimum amount is the same as the installment payment contained in the contract.
- Monthly billings for timber as it is skidded, yarded or removed from the contract area.
- *Purchaser may choose to use a “Blanket Payment Bond”*

Mike Bechdolt

Section 3(f) provides for cutting and/or removal of timber/wood products in advance of payment of the second or subsequent installments, up to, but not exceeding, the ~~penal sum~~ amount of a payment bond, provided in accordance with Section 39(d). A payment bond, is, in effect, guaranteed cash payment for timber/wood products cut and can therefore be thought of as cash paid in advance of cutting. A payment bond does not, however, suffice as value paid in relation to the required first and second anniversary payments. The amount of the payment bond is decided by the Purchaser. Note that the payment bond is a guarantee to pay for timber/wood products which have been cut in advance of payment, together with related road maintenance fees, etc., up to the bond amount of the bond and that payment for the timber/wood products cut under the payment bond is accomplished by a system of monthly billings for the timber/wood products as it is skidded or yarded to a loading point or removed from the contract area. Billings under this section are based upon contract inspections and unit values shown on Exhibit B (**or ticket tracker on scale sales**). Billings should include required road maintenance fees and any optional contributions.

Payment is due within 15 days of the date of billing. The maximum time lapse

between the date of skidding or yarding to a loading point or removal of timber/wood products and the date of payment for timber/wood products could be a month plus 15 days. Under special circumstances, the Purchaser and the Contracting Officer may agree on a billing period shorter than one month.

In the event the Purchaser uses an increased cut-but-not-remove performance bond in tandem with a payment bond, the value of timber/wood products cut under the increased performance bond must be deducted from the total value of the timber/wood products cut in advance of payment in order to determine the value of timber/wood products cut under the payment bond.

ASK: If the Purchaser wants to use a Blanket payment Bond to cover several contracts on the same BLM District, what additional actions must he take?

Answer: Each contract has to be added to and then deleted from the Blanket Bond.

Section 3 (g) – Payment

(g) For the purpose of determining (1) when payments are due or (2) the value of timber subject to any special bonding provisions, Government shall calculate the value of timber in accordance with the provisions of *Exhibit B*.

5450-003 Lump Sum Sale
5450-004 Scale Sale

Mike Bechdolt

Section 3(g) provides for calculation of timber/wood product values in accordance with Exhibit B for the purpose of determining when payments are due or are subject to any special bonding provisions.

In the 5450-003, Lump Sum Sale, Timber/wood product values are established by Exhibit B on a value-per-acre basis. This precludes arguments concerning such things as value cut because of distribution of high value species in the cutting areas or “high grade” selective logging performed by the Purchaser. Exhibit B sets forth, prior to sale advertising, the computations which will be applied to the contract unit prices to determine the value per acre of timber/wood products subject to cutting, skidding or yarding, or removal.

In the 5450-004, Scale Sale, Timber/wood product values are established by Exhibit B on a value-per-acre basis. At the end of the sale a modification adjusts the volume and value to reflect the scaled volume.

Section 3 (h) – Payment

(h) **Notwithstanding Sec. 3(a)**, if the time specified for cutting and removal expires or the contract is cancelled, credit against the **total** purchase price will be determined pursuant to Sec. 11. The Government will then bill the Purchaser for the amount due, payable within fifteen (15) days of the demand for damages.

Sec. 11. Credit Against Purchase Price - If the time specified for cutting and removal of timber has expired or the rights of Purchaser have been cancelled, Purchaser shall be entitled to a credit against any amount which is due and owing Government for timber remaining on the contract area.

Mike Bechdolt

Section 3 (h) – Payment

- Spells out the procedure to follow in determining the amount of credit against the purchase price should the time for cutting and removal expire (Section 4), or the contract is cancelled.
- The amount due is to be billed the Purchaser, payable within fifteen (15) days of the demand for damages.

Mike Bechdolt

Section 3(h) provides that if the time for cutting and removal specified in Section 4 expires or the contract is cancelled, credit against the purchase price will be determined pursuant to Section 11, which provides the process to determine the value of any timber/wood products designated for removal and still remaining on the contract area. This will be discussed further in Section 11 – Credit Against the Purchase Price. ~~(see discussion below for Section 11). This process involves reappraisal and/or reoffer of any remaining timber/wood products, which can take some time. Section 11 then states the Government will then bill the purchaser for the amount due, payable within 15 days of the demand for damages. The word “then” in the preceding sentence and in Section 11 does not mean “immediately” upon the expiration date. First, damages must be computed.~~

Section 3(h) would seem to implicitly sanction non-payment of the total purchase price by the expiration date by virtue of prescribing a process to determine credit value of remaining timber/wood products per Section 11, and then bill the purchaser for the amount due.

ASK: What's to prevent a Purchaser from electing this option??

While the Section 11 process will delay payment of the total purchase price during the establishment of any credit value, this does not change the fact that the Purchaser is in default of the contract by virtue of not paying the total purchase price as of the expiration, and waiting for any credit refund that might be payable for any timber/wood products they elected to not harvest.

Section 3 (i) – Payment

(i) Purchaser shall make all payments at a depository as designated by the Contracting Officer in cash or by money order, check, **credit card**, or electronic transfer made payable to the Department of the Interior, Bureau of Land Management.

Mike Bechdolt

Section 3(i) specifies that payments are paid at a depository as designated by the Contracting Officer. Payments may be made in the form of cash, money order, bank draft, credit card (not to exceed \$49,999.99), check, or electronic transfer made payable to the Department of the Interior-BLM.

Question: What about \$50,000 installment payments?

Section 3 (j) – Payment

(j) For any payments or other charges not paid when due, interest shall accrue on the amount due at the Department of Treasury's Current Value of Funds rate published in the Federal Register, beginning thirty (30) calendar days after the billing date shown on the billing form. For every demand letter issued, an administrative charge will be assessed. If payment has not been received within ninety (90) calendar days after the billing date shown on the billing form, administrative penalties will be assessed at a rate of 6 percent per annum on any outstanding principal balance. All fees are assessed in accordance with the Debt Collection Improvement Act of 1996 (110 Stat. 1321) or any amendment thereof.

Mike Bechdolt

Question: Should we shut down a Purchaser's operation if they have not paid after 15 days?

Answer:. What should we do first if we haven't received payment? What factors would we consider; blanket payment bond, performance bond, size of company, etc...

Section 3 (j) - Payment

- Provides for the accrual of interest on overdue payments beginning 15 calendar days after billing date shown on the billing form.
- If payment has not been received within ninety (90) days from the date the payment was due from the Purchaser, administrative handling charges, administrative penalties and penalty interest shall be assessed
- All fees are assessed in accordance the Debt Collection Act.
- Contract Administrator must accurately prepare a determination of acreage and value cut in accordance with Exhibit B.

Mike Bechdolt

Section 3(j) provides for accrual of interest on overdue payments or other charges, beginning 15 calendar days after the billing date shown on the billing form.

In addition, collection of administrative handling charges, administrative penalties and penalty interest is provided if payment is not received within ninety (90) days from the date the payment was due.

All fees are assessed in accordance with the Debt Collection Act of 1996.

This provision makes it imperative that the Authorized Officer accurately prepare a determination of acreage and value cut, in accordance with Exhibit B. An accurate determination of the extent of the logging operations will preclude minor disputes concerning the amount of cutting, skidding or yarding, or removal.