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BY THE U.S. GENERAL ACCOUNTING OFFICE

Report To The Honorable Alan J. Dixon United States Senate

Wherry Housing Project Renovation At Scott Air Force Base, Illinois

The Air Force did not fully comply with the Defense Acquisition Regulation and Air Force implementing regulations in renovating the Wherry housing at Scott AFB, Illinois. The invitation for bids was issued before its required review by the Staff Judge Advocate's office, and publication of a pre-invitation synopsis was not made within the prescribed time limitation. These actions, however, did not appear to have any significant effect on the contract award process. However, a key provision of the contract, the production schedule, was ambiguous, and this caused a delay in beginning work on the project.



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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

NATIONAL SECURITY AND
INTERNATIONAL AFFAIRS DIVISION

B-216127

The Honorable Alan J. Dixon
United States Senate

Dear Senator Dixon:

You asked us to review certain matters relating to a \$12.9 million contract the Air Force awarded to The Triax Company for the renovation of Wherry military family housing units at Scott Air Force Base, Illinois. We subsequently met with your office to discuss the request and establish the parameters of our review. We agreed to

- review the Air Force's actions prior to award of the contract, including the adequacy of its investigation of the prospective contractor's capabilities;
- determine whether the Air Force had complied with the Defense Acquisition Regulation (DAR) in allowing the contractor to revise its bid to correct a mistake;
- determine the rationale and propriety of the Air Force's decision to increase the number of apartments to be made available for renovation by the contractor at any one time to 56 after the contract was awarded, when it originally intended to provide only 24 apartments;
- ascertain whether the Air Force had ever considered the contractor to be in default and why the contractor had sued the Air Force for breach of contract; and
- determine the extent to which the contractor hired local labor.

We also agreed, pursuant to a November 13, 1984, request from your office, to determine whether less than high quality flooring material was being used on the project and to inquire into the quality of workmanship in the installation of the flooring and the adequacy of the conditions under which the flooring material was stored before it was installed.

To address these objectives, we examined contract and correspondence files at Scott Air Force Base and reviewed the applicable DAR and Air Force implementing guidance. We interviewed contracting, engineering, and legal officials of Headquarters, Military Airlift Command and Scott Air Force Base, as well as legal representatives at the Air Force Logistics Command and officials at Headquarters, Air Force. We also observed the renovation work in process, examined materials being used, and held discussions with contractor officials and local labor union representatives. Our work, performed from June 10, 1984, to December 18, 1984, was conducted in accordance with generally accepted government auditing standards. The results of our work are summarized below and discussed in detail in the appendix.

The actions of the Air Force officials at Scott Air Force Base prior to award of the contract to renovate the housing did not fully comply with DAR and Air Force implementing regulations in two respects. First, the invitation for bids was issued before its required review by the Scott Air Force Base Staff Judge Advocate's office. Second, the pre-invitation bid synopsis was published only 5 days before the invitation for bids was issued, rather than the recommended 10 days. We found no evidence that either of these actions had any significant detrimental effect on the contract. The Air Force considered it necessary to take such actions to expedite awarding of the contract in fiscal year 1983 because much of the funding for the project would expire at the end of that fiscal year. Air Force Headquarters had directed that all necessary steps be taken to award the contract by September 30, 1983.

In our review of the actions taken by the Air Force to allow the contractor to correct the mistake in its bid, we concluded that the Air Force acted properly. The contractor had inadvertently omitted \$931,200 for heating and air-conditioning costs. Under the provisions of the DAR, there is authority to allow or disallow a contractor's request to correct a mistake in its bid. These provisions were followed in regard to the Triax mistake, and the contracting officer, after reviewing the request and receiving favorable advice from legal counsel, granted the contractor's request.

Also, the contract contained a vague production schedule provision. The production schedule stated that the government would make available to the contractor a minimum of 24 apartments to start renovation work with the first increment of 8 apartments to be completed within 60 calendar days. Each subsequent increment was to be completed in 10 calendar days. The entire 388 apartments were to be completed in 540 calendar days. The contractor interpreted this provision to mean that it would receive at least 24 apartments to start its renovation work and as many as necessary thereafter to complete the work within 540 calendar

days. At the time the contract was awarded the Air Force interpreted this provision to mean that it was not obligated to provide more than 24 apartments at any one time. However, subsequent to the contract award, the Air Force agreed to increase the number of available apartments to 56.

We believe the decision to increase the number of apartments to be made available at any one time was appropriate. The increase, which was allowable under the vague language of the production schedule of the contract, was based on an independent architect-engineering study which concluded that the minimum number of apartments that should be made available was 48. Given the nearly \$3 million difference between Triax and the next lowest bidder, we believe it is highly unlikely any of the unsuccessful bidders would have been able to match or beat the low bid even if they had known at the time they submitted their bids that the number of apartments available at any one time would be increased.

Although Scott Air Force Base officials considered initiating default action against the contractor for not beginning work on the date called for in the contract, the Air Force Staff Judge Advocate's office, after completion of the independent architecture-engineering study, found no basis to support a default termination. Subsequently, the contractor filed suit against the U.S. government for breach of contract, claiming the Air Force's interpretation of the production schedule made the contract impossible to perform. The contractor withdrew its suit when the Air Force agreed to a revised production schedule, but the contractor reserved the right to recover any increased costs resulting from the above government actions which the contractor believes constituted a suspension of work. On April 26, 1985, the contractor filed suit in the U.S. Claims Court, claiming damages for this suspension of work; the suit had not been settled as of September 11, 1985.

There was no requirement for the contractor to hire local residents, but as of November 24, 1984, the contractor's work force consisted of approximately 44 percent local hires.

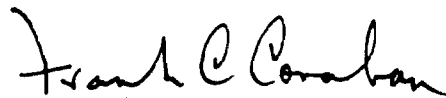
We observed some unevenness in the finished floors resulting from the method being used to install the flooring. However, the method used complies with the contract requirements and the materials being used are of high quality.

We believe problems of the type encountered in the awarding and administration of this contract could have been alleviated by careful planning and adherence to existing regulations and established procedures. Contract and production schedule provisions should be clear, concise, and unambiguous. Also, sound engineering analysis should be applied to assure that requirements of the contract can be achieved.

We discussed a draft of this report with officials of the Office of the Secretary of Defense and the Air Force on May 16, 1985. They generally agreed with our findings. Department of Defense officials said the expedited procedures used in processing the contract were necessary and allowable. They said the Congress considered this an emergency expenditure to meet urgent national needs. We recognize the DAR allows the use of emergency procedures; however, the determination to allow use of emergency procedures was not documented as required. Further, during our review we were told by an official at the contracting and acquisition directorate, Scott Air Force Base, that the use of emergency procedures was not authorized.

We plan no further distribution of this report until 15 days from its date of issuance unless you publicly announce its contents earlier. At that time, we will send copies to the Secretaries of Defense and the Air Force, and to other interested parties.

Sincerely yours,



Frank C. Conahan
Director

WHERRY MILITARY HOUSINGRENOVATION AT SCOTT AIR FORCE BASE, ILL.BACKGROUND

The Air Force awarded an architect and engineering contract in March 1983 to provide project drawings, specifications, construction cost estimates, etc., for improvements and repairs of 1,080 Wherry military family housing units. The renovation included upgrading the interiors of the units (e.g., structural changes, kitchen and bathroom improvements and electrical and heating modifications) and making exterior changes to the buildings (e.g., new storage facilities, patios, roofs, windows, and siding), in addition to providing offstreet parking, an electrical substation, and landscaping.

The invitation for bids for the construction contract to renovate the first 388 apartments under the first of a three phase project was issued August 1, 1983. Bids were opened on September 9, 1983. Five bids were received. Three exceeded the statutory limitation of \$36,000 per unit¹ for the renovation of Scott Air Force Base's military housing and were rejected. A fourth was within the statutory limitation but exceeded the administrative maximum of \$33,600 per unit² and was not considered responsive. The remaining low bidder, The Triax Company of Alpine, Utah, was awarded a firm fixed-price contract on September 28, 1983, for \$12,225,000. The Air Force subsequently allowed Triax to increase its bid to \$12,911,200 to correct a mistake in bid and to adjust for a reduction of a subcontractor's estimate.

Funding to cover contract and other costs for the project was authorized by Public Law 98-8 (Emergency Jobs Appropriation) and by Air Force Post Acquisition, Improvement Project funds. Fifty-two percent (\$6,684,900) was authorized under Public Law 98-8 and 48 percent (\$6,250,600) was authorized under the Air Force Post Acquisition, Improvement Project funds. Of the \$12,935,500 total, \$8,850,800 (68 percent) would have no longer been available if not obligated by September 30, 1983.

A dispute arose at the time the contract was signed concerning the number of apartments to be made available to the contractor for renovation at any one time. The contractor contended that in order to complete the work on schedule, it needed a much greater number

¹The statutory limitation for this project is a per unit ceiling established by the Congress. The figure was included in the invitation for bids and cannot be exceeded in renovating the Wherry military housing.

²The administrative maximum price appears in the invitation for bids and consists of the statutory ceiling reduced by \$2,400 per unit. The \$2,400 is the amount determined by Scott Air Force Base as the cost for administering and monitoring the contract.

of apartments than the 24 at any one time the Air Force believed was necessary to accomplish the contract. Although the dispute was not resolved, both parties signed the contract. The contractor, however, refused to start the project by November 15, 1983, as scheduled. It was not until June 15, 1984, after the Air Force had agreed to provide more than double the number of apartments (56), that Triax began work.

Air Force officials said Triax's performance since work began has been acceptable. Renovation of the first eight apartments was not completed as scheduled. However, both the Air Force and the contractor believe the initial delays, due in part to revisions in the drawings and specifications, can be overcome as the revisions are standardized in the remaining apartments. An Air Force official said the contractor has cooperated in rectifying early construction problems.

AIR FORCE PROCUREMENT ACTIONS PRIOR TO AWARD

Air Force officials at Scott Air Force Base did not follow all the appropriate procurement procedures in awarding the contract to Triax. The Scott Air Force Base Staff Judge Advocate office's legal review of the invitation for bids was late, and timely notices were not given to prospective bidders as required by the Defense Acquisition Regulation (DAR).

Much of the funding for the project was due to expire at the end of fiscal year 1983. Air Force Headquarters directed Scott Air Force Base officials to do everything necessary to award the contract by September 30 and warned that projects not awarded by that date would be "dropped and abandoned."

Contracting and acquisition directorate officials at Scott Air Force Base said the prospect of losing the authorized funding for the project after September 30, 1983, was a factor in limiting the depth of their contract review and to some degree adversely affected the contract award process.

Invitation for bids not handled in accordance with regulations

Legal review by the base Staff Judge Advocate is required for all contractual documents in excess of \$25,000. The construction contract invitation for bids for the Wherry housing project was issued before it received this required review. The applicable Military Airlift Command regulations require that this review normally be performed before the invitation is issued. The invitation for bids was issued August 1, 1983, even though the legal review was not completed until 5 days later. Under emergency acquisition procedures of the DAR, concurrent issuance of the invitation for bids and legal review is

authorized, however, emergency acquisition procedures had not been initiated, according to a contracting and acquisition official at Scott Air Force Base.

Regulations also provide for the publication of the pre-invitation synopsis 10 days before issuance of the invitation for bids when feasible. In this instance, the synopsis appeared in the Commerce Business Daily on July 27, 1983, only 5 days before the invitation for bids was issued. The purpose of a 10 day lead time between publishing the pre-invitation synopsis and issuing the invitation for bids is to enhance competition by enabling prospective contractors, who would not otherwise receive them, to request an invitation for bids.

Air Force investigation of prospective contractor

The DAR vests the determination of bidder responsibility in the contracting officer. In making that determination the contracting officer must have "information sufficient to satisfy himself" that the prospective contractor is responsible. The contracting officer has broad discretion in this matter, including the extent of investigation necessary. While the assessment by the Air Force of Triax's ability to perform under the contract was limited, we found no evidence of any abuse by the contracting officer of his discretion.

Documentation in the contract file indicated that Air Force officials checked prospective contractors against the government's "Consolidated List of Debarred, Suspended and Ineligible Contractors." Also officials said that locations where Triax had done or was doing business with the government were contacted. One Air Force representative said 75 percent of these responses were positive and 25 percent negative regarding Triax's previous performance on government contracts. However, we could not find any documentation to support this statement. In their approval of the contract on September 27, 1983, officials of Headquarters, Military Airlift Command, requested the addition to the contract files of a memorandum for the record, signed by the buyer and initialed by the contracting officer, stating that satisfactory performance by Triax had been verified. We could find no evidence that such a memorandum was prepared.

The DAR provides that, in the selection of fully qualified responsible contractors, the contracting officer shall obtain from the central data bank a record of the number of contracts and the total dollar amount for all satisfactory evaluations, and complete transcripts of all evaluations showing unsatisfactory performance or outstanding performance. The U.S. Army

Corps of Engineers is the designated repository for these "Construction Contractor Performance Evaluation Reports." We obtained the only five reports available on Triax. The Air Force should have obtained and used these reports in assessing Triax's capabilities. The reports did not contain any significant negative comments, but the Air Force should have followed the regulations and obtained and evaluated the reports.

Agency comments and our evaluation

In commenting on a draft of this report, DOD officials partially concurred with this section and acknowledged that some of the problems that arose could have been precluded through careful planning and closer adherence to regulations. These officials asserted basically that it had been necessary to use time-saving emergency procedures in awarding the contract because most of the funding would expire at the end of fiscal year 1983 and Air Force Headquarters directed that all necessary steps be taken to award the contract by September 30, 1983. Also, they pointed out that the funds for the project were provided under Public Law 98-8, which was described in the law as an emergency jobs appropriation.

Department of Defense (DOD) officials said that expedited procedures used in processing the contract were necessary. We recognize that the DAR permits the use of emergency procedures in certain circumstances. In the case of the review by the base Staff Judge Advocate, if time permits, the review may be prior to publication and distribution of the invitation for bids to prospective bidders. However, under emergency acquisition procedures the invitation for bids may be issued concurrent with the legal review. In this instance the deputy director of the contracting and acquisition directorate at Scott Air Force Base told us during our field work that the use of emergency acquisition procedures had not been authorized on this contract.

DOD officials did not agree with the views of officials at the contracting and acquisition directorate that the prospect of losing the authorized funding adversely affected the depth of the contract review and the contract award process. They said funding considerations were a factor in deciding to use expedited procedures, but there was no adverse effect. Concerning the pre-invitation synopsis, DOD stated that it was not feasible to synopsize this procurement earlier because the funding document was not received until July 22, 1983.

DOD concurred in our finding concerning the extent of the investigation of the prospective contractor, but disagreed with a statement in our draft report that a preaward survey should

have been performed. DOD stated that under the provisions of the DAR, the contracting officer shall consider whether performance and payment bonds are to be furnished and that it is normal practice for each surety company to conduct a prequalification survey, which includes the contractor's capability to complete the contract within the required time. Under normal circumstances the contracting officer is not expected to duplicate this effort. We agree that the contracting officer acted within the scope of his authority in determining that a preaward survey was not required and have changed our report accordingly.

COMPLIANCE WITH DEFENSE
ACQUISITION REGULATIONS REGARDING
CONTRACTOR'S MISTAKE IN BID

On September 12, 1983, 3 days after the bids were opened, a representative of Triax called the base contracting office to obtain the results. Triax was informed it was the apparent low bidder and was given information on the second low bidder's submission. Approximately an hour later, Triax called again and informed Air Force personnel that Triax had made a mistake in its bid. Triax said that heating and air-conditioning costs of \$931,200 had been inadvertently excluded from Triax's total bid of \$12,225,000. Triax said the mistake was found after comparing major cost elements in its bid with those in its competitor's bid. The comparison was conducted because Triax was concerned that its bid was about \$3 million lower than its competitor's.

The DAR authorizes administrative determinations in connection with mistakes in bids found after bid opening and prior to award, when a bidder requests permission to correct a mistake in its bid. A determination permitting the bidder to correct the mistake may be made by the Air Force where there is clear and convincing evidence both as to the existence of the mistake and as to the bid actually intended, and if the bid, both uncorrected and as corrected, is the lowest received.

Air Force officials complied with the requirements for processing the mistake in the bid. They requested supporting information from the contractor as the DAR requires. A sworn statement from the contractor regarding the mistake and original worksheets and other data used in preparing the bid were obtained. The matter was then referred to the Staff Judge Advocate, Headquarters, Air Force Logistics Command, for review.

On September 21, 1983, the Staff Judge Advocate, Headquarters, Air Force Logistics Command, advised the contracting officer that clear and convincing evidence had been presented that Triax had made a bona fide mistake in its bid, clear and convincing evidence had been presented as to the bid actually

intended, and that Triax should be permitted to correct its bid and have it considered for award. The total bid amount was increased by \$931,200 to correct the bid mistake, while at the same time Triax reduced its bid by \$245,000 as a result of a subcontractor's lower estimate for an electrical substation. Thus, the total bid was increased from \$12,225,000 to \$12,911,200.

REVISION IN THE NUMBER OF
APARTMENTS PROVIDED THE CONTRACTOR

The invitation for bids and renovation contract contained the following provision:

"The government will make available to the contractor a minimum of 24 apartments to start construction. The first increment (of 8 apartments) shall be completed within 60 calendar days, and each subsequent increment in 10 calendar days thereafter. Upon completion and acceptance of any one increment, the contractor will be assigned an additional 8 apartments."

The contract production schedule, which provided for completing 388 apartments in 540 calendar days, was developed by Scott Air Force Base, Base Civil Engineering. Neither the Air Force nor the architect and engineering contractor prepared a detailed construction schedule for the project. An Air Force official said they relied on prospective contractors to alert the Air Force during the pre-bid period if they could not perform.

On September 26, 1983, when Triax officials arrived at Scott Air Force Base to sign the contract, the issue of the intent of the production schedule was raised. Triax interpreted the provision quoted above and the contract production schedule to mean that at least 24 apartments would be made available, or as many as necessary to accomplish the work within the contract requirements. If they required more than 24 apartments, Triax officials stated that they believed more apartments would be made available in order to (1) accomplish the work within the allowed 540 days and (2) enable them to turn back apartments at the rate of 8 each 10 calendar days. The Air Force interpreted the contract to mean that the Air Force was not obligated to provide more than 24 apartments to the contractor at any time. Triax advised the contracting officer that it could not meet the production schedule under those conditions. On the following day, Triax confirmed its position in a letter to the contracting officer. Notwithstanding these critical differences, the Air Force awarded the contract to Triax on September 28, 1983. Air

Force officials advised us that they made the award believing Civil Engineering's estimate of only 24 apartments in the contractor's possession at any one time to complete the project was correct. Documentation in the contract file indicates that the Triax representative was advised by the Air Force not to sign the contract if he had any doubts about being able to perform the contract.

Triax refused to start the project on the required starting date. From October 1983 through mid-February 1984 the Air Force and contractor debated whether the contract could be accomplished in 540 days with only 24 apartments in the contractor's possession at any one time. In early February 1984, a consulting firm, hired by the Air Force to address the production scheduling question, reported that it would take a minimum of 48 apartments in the contractor's hands at all times in order to complete the project in 540 calendar days. Legal officials at Air Force Logistics Command Headquarters suggested that the Air Force obtain the contractor's agreement to perform based on a new production and delivery schedule with the right to submit a claim for increased costs. The Air Force then modified the contract to make 56 apartments available to the contractor at any one time and work on the first 8 apartments began in June 1984. Air Force officials told us the production schedule as written was confusing and the use of "minimum of 24 apartments to start construction," in retrospect, was not the best wording that could have been used.

With regard to how the change in the production schedule might have affected other bidders, Air Force representatives at Military Airlift Command Headquarters said that changing the number of apartments available to the contractor might have had some, although an insignificant, effect on reducing the spread of approximately \$2,700,000 between Triax's revised low bid and the second lowest bid. Air Force officials added that the probability of the second low bidder reducing its bid by about 18 percent, which would have been necessary to become competitive with the low bidder, was highly unlikely. Their contention was based on the assumption that direct labor was the only cost element in the bid that realistically could have been reduced and that this would have required a reduction of approximately 50 percent in the direct labor cost to meet the low bidder's price.

AIR FORCE AND CONTRACTOR POSITIONS REGARDING LACK OF PROGRESS

The Military Airlift Command initiated action in January 1984 to terminate the contract with Triax for default since the contractor had not begun the work on schedule to assure completion within the time specified by the contract. The office of

the Judge Advocate General at Air Force Logistics Command Headquarters advised against this action, and a default notice was never issued to Triax. An official in the office of the Judge Advocate General said the Air Force could not sustain a default action against Triax and suggested that the Air Force resolve its problems with the contractor. Also, Air Force officials said that termination of the contract for the government's convenience was not feasible because the government would then be liable for settlement costs. The Judge Advocate General's office recommended that a new production and delivery schedule be negotiated with Triax and the contractor retain the right to submit a claim for increased costs because of an alleged suspension of work by the government. As a result, the contractor was never considered to be in default by the Air Force.

On April 5, 1984, Triax filed suit against the United States government in the U.S. Claims Court for damages for breach of contract, claiming the Air Force's interpretation of the production schedule constituted a contract change that rendered the contract impossible to perform within the prescribed time limits. The claim was for approximately \$1,600,000 for compensatory damages and \$500,000 for punitive damages. On April 5, 1984, the Air Force executed a unilateral modification to the contract providing 56 apartments to the contractor at any one time. On May 2, 1984, a subsequent modification, in which the contractor agreed to resume work, was signed by both parties. On May 15, 1984, Triax withdrew its suit against the government. A Triax representative said the reason the suit was dropped was because the Air Force agreed to provide 56 instead of 24 apartments at any one time. However, the contractor reserved the right to submit a claim for increased costs because of what it believes was a suspension of work by the government. On April 26, 1985, the contractor filed suit in the U.S. Claims Court for damages allegedly resulting from the government's actions. As of September 11, 1985, the suit was still under settlement discussion.

Agency comments and our evaluation

DOD officials generally concurred in this section of the report and provided some technical clarifications which we have incorporated where appropriate.

LOCAL RESIDENTS IN THE CONTRACTOR'S WORK FORCE

The Wherry renovation contract does not require Triax to hire local residents. However, the contractor used the Illinois Bureau of Employment Security as a referral service for prospective employees. As of September 7, 1984, Triax had 94 employees at Scott Air Force Base involved in renovating the Wherry

housing project. There were 83 craft or semi-skilled positions, such as carpenters, plumbers, laborers; 9 supervisory/management positions; and 2 clerical staff members. The 83 craft positions consisted of 44, or 53 percent, local residents and 39, or 47 percent, nonlocal hires. All but 2 of the 44 local hires resided in an approximate 60 mile radius of Scott Air Force Base. Although several of the nonlocal employees lived in the Scott Air Force Base vicinity, they were originally from outside this geographic area and were classified as nonlocal in the above computation. The clerical and management/supervisory staff consisted of eight nonlocal and three local employees.

A subsequent check of the contractor's work force showed that, as of November 24, 1984, 46 craft positions were filled with 21 local and 25 nonlocal hires. Of the 11 clerical and management/supervisory staff employed, 4 were local hires while 7 were nonlocal. Therefore, about 44 percent of the combined workforce (i.e., craft, clerical, and management/supervisory) represented locally hired employees.

QUALITY OF WORKMANSHIP AND MATERIALS IN INSTALLATION OF FLOORING IN APARTMENTS

In our review of the quality of workmanship and materials in the installation of flooring in the apartments, we followed up on allegations that the contractor was using less than high quality floor tile on the project, using materials damaged in outside storage, and taking shortcuts in preparing the flooring for installing the tile. We found that the contractor was using the brand of floor tile specified in the contract and was meeting Air Force requirements for workmanship under the contract. Early in the project some flooring materials were stored outside. They were subsequently stored in temporary warehouses constructed by the contractor to protect construction materials. We found no defective material in the inventory and there was no evidence that defective flooring material had been installed in the apartments.

We did find, however, that there were shortcomings in the installation of the new flooring. In the normal process of removing the existing vinyl from the floors, the underlayment (i.e., normally quarter-inch plywood sheets), which provides a smooth base on which the tile is laid, is sometimes damaged or grooved in places. To restore a smooth finish, the underlayment can be "floated" with a leveling compound or replaced. Neither of these remedies was provided for in the contract specifications. The contractor is laying the tile directly on the original underlayment; as a result, the floor finishes are in some instances uneven.

Air Force and contractor officials stated that they recognized the problem and had considered using both a leveling compound on the existing underlayment or replacing the underlayment with new material. They concluded that to do a proper job, the underlayment should be replaced, but, funds were not available.

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