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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

CIVIL DIVISION

JAN 5 1970



Dear Mr. Sandoval:

In response to a request from Congressman Lloyd Meeds, the General Accounting Office has examined into the procurement of cleated plywood containers by the General Services Administration. The Congressman's request was made on behalf of the Loctwall Corporation, Lynnwood, Washington--a small business--which protested a decision by GSA not to award a contract for container items on which Loctwall was the low bidder.

Loctwall's protest stemmed from the fact that Loctwall had reached the mistaken conclusion that it would be awarded a contract without fail. Loctwall's conclusion was based, in part, on information--both verbal and written--received from SBA's Pacific Coastal Area Office in conjunction with its efforts to grant a Certificate of Competency to Loctwall for the subject procurement.

We believe that the problems experienced as a result of Loctwall's mistaken conclusion indicate a need for SBA to take positive steps to avoid such misunderstandings in the future. To this end, we recommend that SBA (1) emphasize to operating personnel the necessity to refrain from disclosing any information regarding contract award to prospective suppliers and (2) instruct its area offices that written communications with prospective suppliers who apply for a Certificate of Competency be phrased in a manner which does not offer promise of a contract award.

An information copy of our report to Congressman Meeds is enclosed.

Sincerely yours,

Henry Eschwege
Henry Eschwege
Associate Director

Enclosures - 2

The Honorable Hilary Sandoval, Jr.
Administrator, Small Business
Administration

9/4/71

SBA

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COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

B-163971

December 31, 1969

Dear Mr. Meeds:

Reference is made to your letter of August 11, 1969, concerning the problems experienced by the Loctwall Corporation, Lynnwood, Washington, in attempting to contract with the General Services Administration (GSA) to supply cleated plywood containers. You asked that we review the procurement procedures of GSA in obtaining these containers, particularly those procedures used for calendar year 1969 procurements.

Our examination included a review of applicable Federal Procurement Regulations, contract files, and various correspondence as well as discussions with GSA officials, representatives of the Small Business Administration (SBA), and officials of Loctwall. An objective of our examination--as suggested by Mrs. Wright of your staff--was to identify ways of precluding future recurrences of the problems experienced by Loctwall in its dealings with the Government.

The scope of our examination was limited to work necessary to comply with your request and therefore did not include an overall evaluation of GSA's procurement activities. Our work was performed primarily at the GSA Central Office in Washington, D.C.

On the basis of information obtained during our examination, we believe that GSA's dealings with Loctwall were in accordance with Federal Procurement Regulations and that GSA acted within the scope of its authority in connection with the subject procurements. We found no basis on which to question the reasonableness of GSA's decision not to award a contract for the containers for which Loctwall was low bidder.

Loctwall claimed that GSA did not take timely action to award indefinite-quantity contracts for the procurement of containers for the contract period ended June 30, 1969. On the basis of our examination, we believe that GSA's delay in issuing the Invitation for Bids (invitation) until November 25, 1968, was unavoidable. The delay occurred because (1) the containers were new to the GSA supply system, (2) an August 1968 invitation had been canceled because the containers specified were determined by the Department of Defense (DOD) to be

obsolete, and (3) a large number of potential suppliers did not bid on the August 1968 invitation, and this required communication with these suppliers to identify ways of encouraging competition for GSA's container requirements. (See enclosure, pp. 2 and 3.)

After bids were received under the November 1968 invitation, GSA made preaward surveys which indicated that one of the original low bidders and the second low bidder (Loctwall) lacked sufficient working capital to meet the requirements of the proposed contract. Since both contractors were small businesses, it was necessary for GSA and SBA to follow the procedures prescribed by regulations for the issuance of a Certificate of Competency (certificate). (See enclosure, pp. 3 to 6.) The original low bidder declined to file for a certificate and was thereby eliminated from further consideration. However, Loctwall filed for and was subsequently issued a certificate dated April 25, 1969.

Our examination showed that GSA's decision not to make an award for the containers for which Loctwall was the low bidder was based on the fact that, when Loctwall's competency to perform under the proposed contract had been determined, only 2 months remained in the contract period ending June 30, 1969, and sufficient quantities of container stocks were then on hand to meet anticipated demands. The inventory of containers consisted of stocks transferred from DOD and stocks obtained through GSA regional contracts that were awarded in the absence of an indefinite-quantity contract such as Loctwall was seeking. The regional contracts had been awarded to meet urgent demands and to prevent excessive backorders. (See enclosure, p. 8.) Moreover, GSA at the time of its decision, was in the process of evaluating bids in response to an invitation for indefinite quantity contracts to cover the subsequent period--July 1 to December 31, 1969. By awarding contracts under this invitation, rather than to Loctwall under the earlier invitation, GSA could realize savings as a result of lower unit prices. (See enclosure, pp. 7 and 8.)

It appeared to us that, although there were extenuating circumstances which precluded the award of a contract to Loctwall, the crux of the problem was the fact that Loctwall's officials had reached the mistaken conclusion that a contract would be awarded to Loctwall without fail. Loctwall officials stated that on numerous occasions SBA and GSA personnel assured them that Loctwall would receive an award as a result of the November 1968 invitation. Also, it appeared that Loctwall's conclusion stemmed from actions taken by GSA--its repeated requests to Loctwall for extensions of its bid

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acceptance period, for example--and on verbal and written statements by SBA.

GSA has an informal policy which encourages its contracting personnel to withhold award information from prospective suppliers until such time as a final award decision has been made. GSA personnel informed us that this policy was followed at all times during their contacts with Loctwall. On the other hand, an SBA representative informed Loctwall officials that, in accordance with the normal practice, a contract would be awarded if a certificate was issued by SBA. This verbal statement was followed by a letter from an SBA area office advising Loctwall that it had been issued a certificate. The letter also contained statements regarding contract award that could have been misconstrued in view of Loctwall's expectations of receiving a contract. (See enclosure, p. 6.)

On the basis of the information obtained during our examination, we believe that Loctwall's conclusion that it would be awarded a contract was not unwarranted under the circumstances. In our opinion, SBA's letter to Loctwall advising that a certificate had been granted contributed substantially to Loctwall's mistaken conclusion that the award of a contract was imminent.

We therefore are recommending that, to avoid such misunderstandings in the future, GSA and SBA take steps to provide that all contacts with prospective suppliers--whether written, telephonic, or face-to-face--be phrased and conducted in a manner which does not offer promise that the award of a contract is forthcoming. We will communicate our recommendations on this matter to GSA and SBA.

The enclosure to this report presents in detail the actions taken by GSA, SBA, and Loctwall in regard to the subject procurements. GSA officials have reviewed a draft of this report and have confirmed the accuracy of the facts as they relate to GSA's actions.

Pursuant to our arrangement with Mrs. Wright, an information copy of this letter will be furnished to both GSA and SBA.

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Please let us know if we may be of further assistance.

Sincerely yours,



Assistant Comptroller General
of the United States

Enclosure

The Honorable Lloyd Meeds
House of Representatives

GENERAL ACCOUNTING OFFICE EXAMINATION INTO
THE GENERAL SERVICES ADMINISTRATION'S
PROCUREMENT OF CLEATED PLYWOOD CONTAINERS

BACKGROUND

The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471) made the General Services Administration (GSA), responsible for providing an efficient and economical system for the procurement of personal property and nonpersonal services needed by Government agencies. The Federal Supply Service (FSS) operates GSA's Government-wide procurement and supply program which services civilian agencies, the Department of Defense (DOD), and other authorized recipients.

To increase supply efficiency and avoid duplication of stock, GSA and DOD began in 1963 to develop a coordinated national supply system whereby either one of the agencies would assume management responsibility for certain common-use items. In furtherance of this objective, GSA assumed management responsibility from DOD for cleated plywood containers in July 1968. These containers are intended to be used exclusively for consolidated overseas shipments.

GSA, in order to maintain an adequate and accessible inventory, specified that these containers would be made available from its warehouses located in GSA's Region 3 (Washington, D.C.) and Region 8 (Denver, Colorado). Stocking is limited to these two regions in order to minimize costs while concentrating supplies near the major using activities.

The GSA Central Office awards indefinite-quantity contracts under which the regional offices replenish their warehouse stocks. In addition, definite-quantity contracts are awarded by GSA's regional offices. These procurements are for quantities in excess of the maximum order limitation prescribed in the indefinite-quantity contracts and are made to supplement warehouse stocks in connection with an interservice support agreement between Region 3 and DOD. The stocks purchased under the interservice support agreement are for prepositioning¹ at the Defense General Supply Center in Richmond, Virginia.

¹ A system whereby GSA purchases high demand stocks for direct delivery and storage at a DOD warehouse. GSA is responsible for maintaining all inventory records on the basis of receipt and issue information provided by DOD.

During the contract period January 1 to June 30, 1969, GSA purchased about 100,000 units of cleated plywood containers, including 30,000 units for prepositioning at the Defense General Supply Center. The cost of these purchases totaled about \$2.1 million.

DELAYS EXPERIENCED BY GSA IN
ISSUING AN INVITATION FOR BIDS

Loctwall claimed that GSA did not take timely action to award indefinite-quantity contracts for cleated plywood containers.

Our examination showed that, after supply management responsibility for cleated plywood containers was transferred to GSA on July 1, 1968, the Central Office took action to award indefinite-quantity contracts under which warehouse stocks of containers could be procured. In the interim, the GSA regional offices filled orders from stocks that had been transferred from DOD and from stocks that had been obtained under definite-quantity contracts. (This matter is discussed in detail on p. 8.)

On August 6, 1968, GSA issued an Invitation for Bids (IFB) for indefinite-quantity contracts for the procurement of containers during the 12-month period beginning October 1, 1968. The bids were to be opened on August 27, 1968. However, on August 22, 1968, GSA canceled the IFB because the containers specified were determined by DOD to be obsolete and were being phased out of the supply system and replaced by similar items. Prior to the issuance of a revised IFB for the containers, it was necessary for GSA to make changes in the product description and packaging instructions to be specified in the IFB.

The issuance of a revised IFB was further delayed because a large number of potential suppliers had not bid in response to the August 1968 IFB. GSA therefore communicated with various suppliers in order to determine what factors might encourage competitive bidding. GSA told us that suppliers were reluctant to contract for an indefinite quantity of containers over an extended period of time because of extreme fluctuations of plywood prices. Therefore, to conform to market conditions and thereby stimulate interest in GSA's requirements, the IFB was revised to (1) cover the procurement of containers for a period of 6 months rather than a year and (2) provide for a minimum guaranteed quantity of containers equal to 50 percent of estimated requirements.

On November 25, 1968, after making the necessary revisions, GSA issued an IFB for the contract period January through June 1969. The bid opening originally scheduled for December 16, 1968, was later extended to December 20, 1968, in order to provide suppliers additional

time to consider changes that were made to the product description after the issuance of the IFB.

The IFB provided for the requirements of 10 container sizes for each of the two regional office warehouses, or a total of 20 groups of containers. The purchases were estimated to cost \$743,500 for 36,360 units during the contract period.

On the basis of our examination of the foregoing circumstances, we believe that it was not possible for GSA to make the necessary bid evaluations and bidder responsibility determinations in time to award the contracts before January 1, 1969.

GSA'S EFFORTS TO DETERMINE
RESPONSIBILITY OF BIDDERS

Loctwall maintained that the time taken by GSA to evaluate and determine the responsibility of the bidders was excessive in view of the fact that the evaluations and determinations required 10 weeks-- December 20, 1968, to March 6, 1969.

When the bids were opened, the responsive low bidders were Select Services, New Orleans, Louisiana; Hurco Industries, Ogden, Utah; and C&S Wood Products, Inc., Dickson City, Pennsylvania. At that time, Loctwall was not low bidder on any of the groups of containers included in the IFB but was second low bidder on 11 of the groups.

On January 7 and 8, 1969, the GSA contracting officer initiated action to conduct preaward surveys of the low bidders' ability to provide GSA's requirements based on their financial responsibility and production capacity reports. GSA Central Office considered these surveys to be necessary because it was the Central Office's initial purchase of containers.

On the basis of favorable survey reports, GSA awarded contracts to Hurco Industries for one group of containers and to C&S Wood Products, Inc., for three groups of containers on February 14 and 18, 1969, respectively. Awards for the remainder of the groups of containers could not be made at that time because of a series of problems encountered in confirming Select Services' bid prices and determining its ability to perform under the contract.

On January 22, 1969, GSA's quality control personnel attempted to perform a plant facilities survey at Select Services; however, the company requested and was granted a week's extension in order to further prepare for the preaward survey. The survey subsequently

was completed, and on February 4, 1969, a plant facilities report was submitted to the GSA Central Office which indicated that Select Services had the capability of performing at a capacity necessary to meet the terms of the contract.

During this period, the GSA contracting officer also requested that a financial responsibility survey be performed of Select Services, and on February 19, 1969, following numerous requests for information, it was determined by GSA's Credit and Finance Division that the financial status of Select Services--a small business--indicated that it could not successfully perform under the proposed contract because of its limited working capital. GSA, therefore, could not approve an award of a contract to Select Services.

Federal Procurement Regulations (FPR) provide that, if a small business is denied an award because of capacity or credit, SBA must be notified of the circumstances so that it may evaluate the firm and determine whether a Certificate of Competency (certificate) should be issued. In accordance with the FPR, GSA notified SBA by letter dated March 4, 1969, that a financial responsibility survey indicated that Select Services could not successfully perform under the proposed contract, and requested that the necessary action be taken. By letter dated March 6, 1969, SBA advised GSA that Select Services had declined to file for a certificate and that the files were therefore being closed. As a result, second low bidders could then be considered for awards.

Since Hurco was the second low bidder for two groups of containers, its contract was amended on March 13, 1969, to include these groups. Likewise, C&S Wood Products' contract was amended on March 21, 1969, to include three additional groups of containers.

GSA'S EFFORTS TO DETERMINE
THE RESPONSIBILITY OF LOCTWALL

As a result of GSA's determinations and Select Services' refusal to file for a certificate, Loctwall became the low bidder for the remaining 11 groups of containers included in the IFB. In anticipation of Loctwall's becoming the low bidder, GSA, beginning in February 1969, queried its Region 10 in Auburn, Washington, and DOD for information concerning Loctwall's performance under prior contracts. The information obtained proved to be favorable, but it was of limited scope and depth. GSA officials stated that, in view of the amount of the proposed contract award--\$476,000--and the lack of sufficient information, a preaward survey was necessary to determine Loctwall's ability to perform under the contract.

On March 3, 1969, the GSA Central Office requested that financial responsibility and plant facility surveys be made of Loctwall and that the results be reported at the earliest possible date. The results of Region 10's plant facility survey, received by GSA Central Office on March 13, 1969, indicated that Loctwall was not capable of furnishing all the requirements. The report stated that Loctwall, because of its commercial commitments, could realistically produce only part of the estimated peak monthly requirement for the 11 groups of containers specified in the IFB.

GSA's Credit and Finance Division requested, by letter dated March 4, 1969, that Loctwall complete and return a Statement of Financial Information. The completed form, dated March 10, 1969, was received on March 25, 1969; and, because of the urgency of the request, the Credit and Finance Division made the necessary evaluations and reported to the contracting officer on the same day. The report indicated that Loctwall lacked sufficient working capital for the proposed contract.

On March 25, 1969, GSA--in accordance with the provisions of the FPR and in order to expedite administrative action--verbally notified SBA's Pacific Coastal Area Office, San Francisco, California, that, because of Loctwall's financial status, that firm could not be approved for the award of a contract. On March 26, 1969, SBA informed GSA that Loctwall had been contacted and, in accordance with the provisions of the Small Business Act, would file for a certificate.

The FPR provides that GSA withhold the award of a contract until either the issuance of a certificate by SBA or the expiration of 15 working days from the date of official notification by GSA that a certificate is required. Consequently, following official notification on April 1, 1969, SBA should have taken action by April 21, 1969. However, SBA advised GSA by letter dated April 15, 1969, that its evaluation of Loctwall had provided a basis for the issuance of a certificate but that action would be withheld until May 6, 1969, in the hope that GSA would award the contract without a certificate. On April 17, 1969, GSA advised SBA that a certificate would be necessary before a contract could be awarded to Loctwall.

SBA procedures provide that a certificate issued to a small business for performing a contract in an amount of over \$250,000 must be issued by the SBA Central Office, Washington, D.C. Because the amount of the proposed award was estimated at \$476,000, SBA's Pacific Coastal Area Office forwarded the results of its evaluation and other pertinent data to SBA's Central Office. Following an analysis of available data, the Central Office issued a certificate on April 25, 1969,

which certified the ability of Loctwall to perform under the proposed contract.

RESULT OF LOCTWALL'S COMMUNICATIONS
WITH GSA AND SBA

Loctwall stated that on numerous occasions it received assurances from GSA and SBA representatives that an award of a contract for the containers would be forthcoming and that, in expectation of an award, Loctwall granted several extensions to its bid acceptance period. Loctwall told us that it had received a letter from SBA which advised that an award would be forthcoming.

According to GSA officials, it is GSA's policy to require its personnel who communicate with potential contractors to guard against disclosing any information which could be misconstrued to mean that a contract would be awarded. As part of our examination, we talked with the GSA personnel having responsibility with respect to the invitation for containers, particularly the personnel mentioned in Loctwall's correspondence. They stated that in their opinion GSA's policy had been followed at all times during conversations with Loctwall officials.

We also talked with SBA officials who had performed various functions in connection with issuing the certificate to Loctwall. One of these officials told us that he had informed Loctwall that, following normal procedures, a contract would be awarded if a certificate was granted. Subsequently, SBA informed Loctwall by letter dated April 28, 1969, that a certificate had been granted. The letter further stated:

"It is hoped that you will justify our confidence by expeditious handling of the contract, and if this Agency can be of any assistance to you in the performance of this contract, please let us know.

"Upon receipt of the contract award, will you please immediately notify * * * [SBA official] so that he can properly post and report on the progress of the contract. The information needed will be date of award, contract award number, and dollar value of the award.

"We cannot stress too strongly the importance of timely completion of this contract both to you and the Small Business Administration."

In view of the above, Loctwall's conclusion that it would be awarded a contract--although incorrect--does not appear to be unwarranted.

BASIS FOR GSA'S DECISION
TO DENY AWARD TO LOCTWALL

GSA officials informed us that, following receipt of the certificate for Loctwall on April 28, 1969, there was considerable concern over the fact that only 2 months remained in the contract period ending June 30, 1969. Because of the time required to (1) make an award of a contract, (2) inform the regional offices of the necessary contract information, and (3) place orders with a contractor, Loctwall--if it had been awarded a contract--would not have been able to deliver containers until well into the following contract period. Moreover, GSA--in order to ensure a continuous supply of plywood containers--was then in the process of evaluating bids in response to an IFB for indefinite-quantity contracts to cover the period July 1 to December 30, 1969.

Prior to the decision to make no award for the remaining 11 groups of containers, GSA's review of its inventory records showed that sufficient quantities of containers were on hand to meet anticipated demands for the remainder of the contract period ending June 30, 1969. Information obtained during our examination confirmed GSA's finding that there were sufficient quantities of containers in stock. Following is a table which shows the stocking position at May 5, 1969, of the eight items¹ included in the 11 groups of containers for which Loctwall¹ was second low bidder.

<u>Federal Stock Number</u>	<u>Number of months supply</u>
8115-935-5887	7.5
8115-935-6525	1.7
8115-935-6527	5.1
8115-935-6528	23.6
8115-935-6529	6.0
8115-935-6530	9.7
8115-935-6532	5.6
8115-935-6533	2.8

The above table shows that GSA did, in fact, have sufficient stocks to meet anticipated demands to June 30, 1969. The award of a contract to Loctwall would have increased GSA's container stocks to 9.9 months' supply for item 8115-935-6525 and 5.5 months' supply for item 8115-935-6533.

¹These eight items represent 16 groups of containers because the IFB requested bids on each item for delivery to 2 locations.

GSA officials informed us that it was apparent that the award of a contract to Loctwall would have resulted in a long supply of container stocks and would have made it unnecessary to award the proposed contracts to cover the period July 1 to December 30, 1969. Further, GSA pointed out and we confirmed that, by awarding contracts under the IFB for the period beginning July 1, 1969, rather than to Loctwall, GSA would realize savings amounting to about \$30,000 as a result of lower unit prices.

On May 8, 1969, the GSA contracting officer recommended that no award be made for the 11 groups of containers on which Loctwall was low bidder. The contracting officer's recommendation was approved by the Procurement Operations Division Review Committee and ultimately, on May 16, 1969, by the Assistant Commissioner, Office of Procurement, Federal Supply Service.

SOURCE OF CONTAINERS IN STOCK
AS OF MAY 5, 1969

Loctwall questioned the sufficiency and source of GSA's inventory of containers--which precluded the award of a contract to the company--on the basis that, since the containers were new to the GSA supply system, the first national procurement of the containers was being made for the contract period ending June 30, 1969.

After transfer of supply management responsibility for cleated plywood containers to GSA on July 1, 1968, DOD transferred about 19,000 units from DOD warehouses to GSA warehouses. Further, in the absence of an indefinite-quantity contract to order against, GSA's Region 8, in November 1968, issued an IFB to provide containers to meet urgent demands and prevent excessive backorders. In January 1969, Region 8 awarded definite-quantity contracts for 37,000 containers at a cost of about \$746,000. As a matter of interest, Loctwall bid on Region 8's solicitation and was awarded a contract which amounted to about \$14,000.

The quantity of containers purchased by Region 8 was based primarily on demand information provided by one of the major container users--DSA's Defense Depot Tracy located at Tracy, California. The information from Tracy showed a demand for about 5,400 container units per month for a 6-month period.

On the basis of the available demand information, the 37,000 units provided for about 4-1/2 months' supply of containers. However, the demand anticipated for containers apparently did not fully materialize. Consequently, sufficient quantities were on hand on May 5, 1969, to meet anticipated demands for the remainder of the contract period ending June 30, 1969.

EXTENSION OF THE BID
ACCEPTANCE PERIOD

Loctwall stated that, had it not voluntarily extended its bid acceptance period, GSA would have allowed its bid to expire.

Our examination showed that GSA made several requests which resulted in Loctwall's extending its bid acceptance time through May 12, 1969. However, Loctwall voluntarily granted additional bid extensions beyond May 12, 1969.

GSA officials advised us that, had Loctwall not extended its bid acceptance period beyond May 12, 1969, Loctwall's bid would have been allowed to expire. On May 8, 1969, prior to the expiration of GSA's last requested bid extension, the contracting officer forwarded to the Procurement Operations Division Review Committee a recommendation that an award not be made for the items on which Loctwall was low bidder. On May 12, 1969--the date of bid expiration--the Review Committee approved the contracting officer's recommendation.