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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D C. 20548

CIVIL DIVISION

MAR 12 1970

Dear Mr. Frick

The General Accounting Office has made a review of Commodity Credit Corporation (CCC) financial operations for fiscal year 1969 carried out by the Minneapolis Commodity Office, Agricultural Stabilization and Conservation Service, Department of Agriculture

Our review showed that CCC had paid liquidated damages claimed by processors (contractors) on the basis of CCC delays in issuing Notices to Deliver (ND). The underlying cause of these delays was a longshoremen strike together with a rail embargo. Neither the contractors nor CCC had any control over the embargo or strike.

We believe that, under the circumstances, CCC had no legal liability to pay liquidated damages because the damages sustained by the contractors were in fact caused by a rail embargo resulting from a longshoremen strike and not by CCC's failure to issue NDs in a timely manner Our comments on the matter follow.

INFORMATION ON CCC DELAYS IN ISSUING NOTICES TO DELIVER

CCC entered into contracts with millers and others to purchase processed commodities for export programs. The contractual terms and conditions are illustrated by CCC announcements (Exhibit A), Uniform Contractual Provisions (Exhibit B), and invitations for offers (Exhibit C).

Under the contractual terms and conditions, the processors were required to make delivery at export points (Exhibit A, p. 8, Sec. 9B and Exhibit C, p. 2) generally within a specified period of a few weeks (Exhibit C, p. 1, para. 1) The contracts provided that failure of CCC to issue NDs in sufficient time to enable the contractor to meet the specified delivery schedule could result in payment of liquidated damages by CCC. This provision states that a contractor's claim for payment of damages must be supported by evidence satisfactory to CCC that the contractor "was in fact delayed by the late issuance of a Notice to Deliver." (See Section 10, Exhibit A.)

Contractors' shipments of commodities to Atlantic and Gulf ports were stopped about December 20, 1968, because of a rail embargo resulting from work stoppage by longshoremen at export points. In view of the longshoremen strike and rail embargo, CCC did not issue NDs. After the strike was settled at various ports around February-March 1969, CCC issued NDs.

Subsequently, contractors submitted claims approximating $170,000 for liquidated damages under Section 10 (Exhibit A) on the basis of late issuance of NDs by CCC. CCC made payment for most of this amount on the basis that the contractors had been prepared to ship in accordance with the shipping schedules. We asked program officials why they had not issued NDs. They informed us that they had not issued NDs because there was no assurance that the commodity could have been exported upon arrival at port Also, issuance of NDs would have been useless since the contractors could not have made shipment because of the rail embargo. The issuance of NDs was delayed, therefore, until the embargo ended.

It is interesting to note that for a certain contract for which CCC had issued a Notice to Deliver in sufficient time, CCC deducted from a payment to the contractor an amount representing liquidated damages due to CCC because the contractor did not meet the specified delivery schedule. (See Section 11, Exhibit A.) This amount was subsequently paid to the contractor because, according to a program official, the contractor was precluded from making delivery on time due to the combination of the longshoremen strike and the rail embargo. This relief was granted to the contractor pursuant to Article 27 of the Uniform Contractual Provisions (Exhibit B). This article allows relief to contractors in situations where strikes, freight embargoes, and other deterrent factors exist.

CONCLUSIONS AND RECOMMENDATION

In our opinion the cause of the contractors not being able to ship commodities on schedule was the rail embargo resulting from the longshoremen strike, and not by CCC's failure to issue NDs in a timely manner. Issuance of NDs by CCC under such circumstances would have been only a formality in that no useful purpose would have been served. We believe, therefore, that CCC did not have a legal liability to pay contractors liquidated damages. We recommend that CCC take steps to recapture the amounts paid for liquidated damages.

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We would appreciate being advised of action taken on our recommendation. Copies of this letter are being sent to the Controller, Commodity Credit Corporation, and to the Inspector General, Department of Agriculture.

Sincerely yours,

Victor L. Lowe
Associate Director

Enclosures - 3
Exhibit A
Exhibit B
Exhibit C

Mr Kenneth E. Frick
Executive Vice President
Commodity Credit Corporation
Department of Agriculture