

090782

76-0044

RELEASED

Not to be released outside the General Accounting Office except on the basis of specific approval by the Director of Congressional Relations

090782



# REPORT OF THE COMPTROLLER GENERAL OF THE UNITED STATES



LM090782

## Large Contract For Purchase Of Letter Sorting Machines By U.S. Postal Service

On December 13, 1974, Senator Stuart Symington of Missouri requested that CAO review a Postal Service procurement award to the Burroughs Corporation. Under the Postal Reorganization Act, the Service was authorized to settle its own accounts, consequently, GAO has no authority to rule on bid protests or otherwise rule on the legality of the Service's procurement practices.

Thus, GAO's examination was limited to (1) whether the Service's procurement procedures were followed and (2) whether any of the firms competing for the contract received favored treatment. GAO concluded that the answer for (1) was affirmative and for (2) negative.

GGD-75-100

AUG 26 1975

9 04044  
090782



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-173423

The Honorable Stuart Symington  
United States Senate

CI  
R

Dear Senator Symington:

This report is in response to your request that we examine the procedures used by the U.S. Postal Service in awarding a contract to Burroughs Corporation for letter sorting machines.

As your office agreed, Agency comments have been obtained and are included as appendix II.

Sincerely yours,

*James A. Stacks*

Comptroller General  
of the United States

C o n t e n t s

	<u>Page</u>
DIGEST	i
CHAPTER	
1 INTRODUCTION	1
What is being bought	1
Procurement method followed	3
Scope of review	4
2 CHRONOLOGY OF EVENTS	5
3 EMERSON PROTEST	11
Service selection of a two-step competitive RFP	11
Alleged violations of procurement regulations	12
Offerors were not given an equitable opportunity to revise proposals resulting from negotiations	12
Offerors were not informed of closing of negotiations and request to submit best and final offers	14
Preaward survey alerted Burroughs that Emerson was low offeror	15
Emerson's price was leaked to Bur- roughs and/or Burroughs was given implicit or explicit pricing in- structions	15
Changes to the technical data package were made during negotiations without issuing written amendments to the RFP	16
4 CONCLUSIONS AND AGENCY COMMENTS	17
APPENDIX	
I Letter dated December 13, 1974, from Senator Stuart Symington	19
II Letter dated June 20, 1975, from the Postmaster General	20

ABBREVIATIONS

ESP	electronic sort processor
GAO	General Accounting Office
MPLSM	multiposition letter sorting machine
RFP	Request for Proposal
USPS	United States Postal Service
ZMT	ZIP mail translator

COMPTROLLER GENERAL'S  
REPORT TO  
SENATOR STUART SYMINGTON

LARGE CONTRACT FOR PURCHASE  
OF LETTER SORTING MACHINES  
BY U.S. POSTAL SERVICE

D I G E S T

- 1 In the award to Burroughs Corporation of a \$28,975,000 contract for 150 letter sorting machines, GAO sought to determine whether C. 451
- the Service's procurement procedures were followed and
  - any of the competing firms received favored treatment.
- 2 GAO concluded that the Postal Service substantially followed its normal procurement procedures and that there is no conclusive evidence that its actions resulted in a competitive advantage to Burroughs Corporation. (See pp. 17 and 18.) 52
- 3 GAO believes, however, that except for two inadvertent actions by the Service, Emerson Electric Company could have received the contract, though this is uncertain. The Service should have: C. 132
- Detected the conditional nature of Emerson's technical proposal during proposal evaluation; this could have eliminated the need for negotiations and could have resulted in Emerson being awarded the contract. (See p. 17.)
  - Issue! explicit instructions on the closing of negotiations, as required by Service regulations, which may have resulted in Emerson lowering its offer. (See pp. 17 and 18.)
- The Postmaster General agreed with the facts and conclusions in the report. (See app. II.)

GGD-75-100

## CHAPTER 1

### INTRODUCTION

On November 8, 1974, the United States Postal Service entered into a fixed-price contract with the Burroughs Corporation for purchasing a new generation of multiposition letter sorting machines (MPLSMs). This \$28,975,000 contract represents the largest single buy of nonfixed mechanization equipment in Service history. Three firms competed for this procurement. After the contract was awarded to Burroughs, one of the competing firms, Emerson Electric Company, protested the award.

On December 13, 1974, Senator Stuart Symington requested that we review the Service's procurement award to the Burroughs Corporation. Under the Postal Reorganization Act, effective 1971, the Service, rather than GAO, was authorized to settle its own accounts; consequently, we have no authority to rule on bid protests or otherwise rule on the legality of the Service's procurement practices. Thus, our examination was limited to (1) whether the Service's procurement procedures were followed and (2) whether any of the firms competing for the contract received favored treatment.

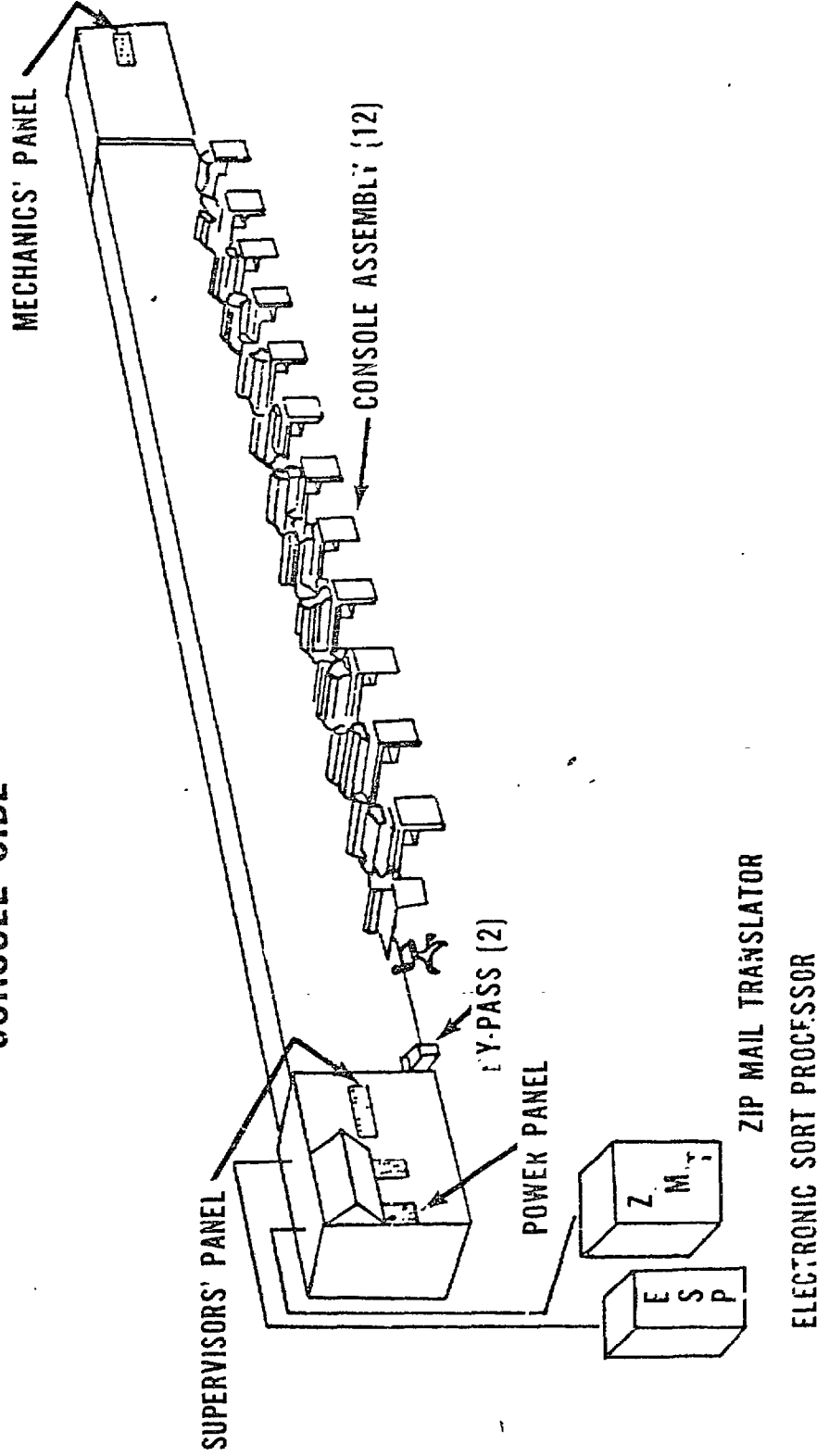
#### WHAT IS BEING BOUGHT

Since 1964, Burroughs Corporation has been awarded--either competitively or on a sole-source basis--all but one contract for MPLSMs. The Service awarded one contract to another firm in an attempt to develop another source of supply; however, the contractor defaulted and Burroughs subsequently received contracts to supply the letter sorting machines called for under the defaulted contract.

Under the contract in question, the Service is buying 150 MPLSMs, 113 ZIP mail translators (ZMTs), 113 electronic sort processors (ESPs), and 300 MPLSM training consoles. These machines will be installed in 113 integrated systems. An illustration of the system is shown on page 2. In addition, the Service is procuring maintenance training and various items--including drawings, operation and maintenance manuals, and spare parts.

The major difference between this generation of letter sorting machines and earlier versions is the addition of the electronic sort processor. This ancillary equipment eliminates many mechanical parts in the MPLSM. As a result, the Service believes letter sorting operations will (1) be

# MULTIPOSITION LETTER SORTING MACHINE—12 POSITION CONSOLE SIDE



more reliable and accurate and (2) operate at a lower machine noise level.

At a meeting of Service officials in April 1974, questions arose concerning the leadtime necessary in buying MPLSMs with ZMTs and ESPs and also whether technical data, drawings, and specifications were available to conduct a competitive procurement. To resolve these questions, a task force of experts on MPLSM/ZMT/ESP was assembled to determine if existing technical data packages could be used and to develop a realistic schedule for manufacture and installation of the MPLSM/ZMT/ESP.

On April 26, 1974, the task force concluded that the Service had adequate technical data packages to undertake a competitive procurement. On May 7, 1974, the Service's Board of Governors approved the procurement.

#### PROCUREMENT METHOD FOLLOWED

This procurement, referred to as a two-step negotiated procurement, involved the Service's issuing a Request for Proposal (RFP) containing information enabling a prospective firm to prepare a proposal. For example, the RFP contained such things as item descriptions, statements of work, specifications, contract clauses, delivery schedules, and the bases upon which the Service would evaluate proposals.

The first step in this procurement called for submission of technical proposals. These proposals were evaluated and the firms ranked. Those firms submitting acceptable technical proposals were then asked to submit detailed pricing proposals. These proposals were examined along with the technical proposals, and the competing firms were again evaluated.

Negotiation sessions with prospective contractors were at the option of the Service. The Service had hoped that the RFP package would be sufficiently complete to enable firms to make acceptable proposals without negotiations. However, the Service recognized that, because of the size and complexity of the procurement, negotiations might be necessary.

The RFP called for a preaward survey of the primary candidate. This involves visits to firms to evaluate prospective contractors' finances, management, and facilities. Normally, at the time of such a survey, a particular contractor has been selected for award contingent upon an acceptable survey.



#### SCOPE OF REVIEW

We examined the Service files pertaining to this letter sorting machine procurement, including the proposals and correspondence submitted by the competing contractors, as well as the Service procurement policies and procedures. We also interviewed cognizant Agency and Emerson officials regarding this procurement. Our work was performed primarily at Service headquarters.

## CHAPTER 2

### CHRONOLOGY OF EVENTS

To understand Emerson's basis for protest, it is necessary to know the activities of the Service and the competing firms which led to a contract award to Burroughs. This chapter presents the chronology of key events from the issuance of the RFP through the contract award.

On June 19, 1974, the Service held a preproposal conference to give a general procurement orientation and to provide RFP packages to potential competitor firms. Seven firms obtained RFP packages.

The competing firms were given until August 30, 1974, to submit technical proposals. Before the technical proposal due date, five amendments were made to the RFP. In accordance with Service procurement regulations, all amendments were made in writing and each firm was supplied with a copy of the amendments. The Rohr-Plessey Corporation, Burroughs Corporation, and Emerson Electric Company submitted technical proposals.

The Service began evaluating the three technical proposals September 3, 1974. The proposals were scored in 15 areas totaling a possible 100 points. Twelve individuals, working independently of each other, were involved in the technical evaluation. The proposals were kept in a room and a sign-in log was used to record the attendance of the evaluators. A locked file cabinet was used to store the proposals and workpapers at night.

By September 12, 1974, the technical evaluations were completed and a score assigned to each proposal. The technical ranking for each firm was as follows:

	<u>Score</u>	<u>Rank</u>
Rohr-Plessey	91	1
Burroughs	76	2
Emerson	74	3

All three proposals were generally acceptable; however, minor deficiencies were noted in each proposal, and the firms were requested to submit amended proposals in the deficient areas. By October 1, 1974, the deficiencies had been cleared up and all proposals were deemed completely acceptable, with the ranking and scores remaining the same.

The next step was to request pricing proposals from each firm. On October 10, 1974, the firms submitted pricing proposals. The prices for each firm were:

Rohr-Plessey	\$44,254,432
Burroughs	31,653,733
Emerson	29,987,000

The Service had estimated the value of this procurement at about \$30.5 million. Although Rohr-Plessey had the best technical proposal, its pricing proposal was deemed not competitive, and thus Rohr-Plessey was no longer seriously considered for the contract award.

The Service's analysis of the Burroughs and Emerson pricing proposals showed that the major difference was in the profit rate. As shown earlier, the technical ranking of Burroughs and Emerson was extremely close. However, Emerson's price was about \$1,700,000 lower. As a result, Emerson was considered the primary candidate for award.

The contracting officer told us that at this time--October 1974--negotiations with the competing firms were not anticipated. He pointed out that the RFP had encouraged the competing firms to submit best and final offers in their pricing proposals because the Service had reserved the right to make an award without negotiations.

On October 17, 1974, the contracting officer advised Emerson by telegram, "\* \* \* your firm has been selected as one of the offerors to be surveyed." Service officials said that the phrase "one of the offerors to be surveyed" was used in lieu of the RFP statement that the "primary candidate" would be surveyed in order to keep Emerson from knowing that it was the low offeror as well as to give the Service latitude in the procurement.

The preaward survey at Emerson was conducted during October 22-24, 1974, by a Service survey team comprising the contracting officer and eight technical evaluators. An issue to be resolved at the preaward survey was the sufficiency of Emerson's drawing effort. Although Emerson's technical and pricing proposals were acceptable, the Service doubted the adequacy of Emerson's proposed drawing effort. At the preaward survey, Service personnel received an oral presentation from Emerson regarding the requirements for and methods of manufacturing, installing, and testing the letter sorting machine systems. When the drawing effort was discussed, the Service became convinced that Emerson's estimated drawing effort was too low.

According to service officials, Emerson's drawing effort was underestimated because:

--Emerson's technical proposal assumed the Service would supply more original drawings than the Service thought it could furnish.

--Many of the Service's original drawings for the MPLSM did not meet the RFP's stringent specifications. Most of these original drawings, even if supplied by the Service, could not be reused as part of the data package to be submitted under contract--as Emerson had planned--and would, therefore, have to be redrawn. The redrawing effort would take more manpower than Emerson provided in its pricing proposal.

The Service did not want to negotiate with Emerson at the preaward survey because, under Service regulations, this would have required the Service to negotiate with all proposers within the competitive range. However, Service officials wanted Emerson to understand the magnitude of the drawing effort required. Therefore, the contracting officer read the following statement to Emerson personnel at the survey:

"USPS original drawings which Emerson requested will be provided; however, originals do not exist in many cases for MPLSM drawings. Emerson will be provided with reproducibles and originals, as available, for the exact set of drawings provided in the RFP."

This statement was approved by the Service's law department as not constituting negotiation with Emerson.

Emerson then revised its presentation to reflect a drawing effort which now provided for many more redrawings. Neither the price of the contract nor the direct labor hours for the drawing effort were changed, however. Although the Service believed the pricing proposal contained an inadequate number of man-hours, the Service felt that Emerson understood the full magnitude of the drawing requirement and considered the new redrawing effort adequate. At the conclusion of the preaward survey, Emerson and the Service agreed that original drawings would be supplied as available. Some of these originals, particularly of the ZMT and ESP, could possibly be reused by Emerson without redrawing.

In an October 29, 1974, memo to the contract files documenting the preaward survey, the contracting officer wrote that Emerson's oral presentation revealed that

"\* \* \* Emerson had an acceptable understanding of the program and fully supported the findings of the evaluation of the Management/Manufacturing Proposal [technical proposal]."

The technical proposal and the oral presentation were both acceptable. In another memo to the file dated October 29, 1974, the contracting officer concluded,

"Emerson Electric has excellent facilities and equipment. They possess all necessary tools, equipment, machines, and test equipment for the MPLSM/ESP/ZMT Program. \* \* \* Emerson is in a sound financial position \* \* \*."

In other words, the preaward survey of Emerson was considered successful, and Emerson's financial position and management were considered sound.

The contracting officer informed us that at the time of these memos he was leaning toward a contract award to Emerson. He did not feel that any negotiations were necessary, and he began to take actions for award of the contract. At the end of October 1974, the Office of Procurement and the Office of Operational Requirements began to gather information required of the Service to meet its obligations under the upcoming contract. The Office of Operational Requirements, responsible for managing the program, wrote a letter to the Planning and New Development Department on October 29, 1974, requesting that the available original drawings necessary to produce the MPLSM/ESP/ZMT and training console equipment be forwarded to the contracting officer.

On October 30, 1974, the Office of Operational Requirements advised the contracting officer that it had evaluated all technical and cost data submitted by the three competing firms and that because Emerson was significantly lower in price the Office recommended an immediate award to Emerson.

After this recommendation the Planning and New Development Department, responsible for maintaining the technical data, advised the Office of Operational Requirements that original drawings would not be released because the originals were needed to service the existing letter sorting machine systems.

Because the original drawings would not be available, the Office of Procurement reexamined the RFP to determine if the service was required to supply original drawings that had been promised to Emerson during the preaward

survey. It found in the RFP no statement that original drawings of the existing MPLSMs, ZMTs, or ESPs would be supplied. However, original drawings for the training consoles were to be provided. The Service told us that further examination of the proposals from the three firms showed that only Emerson's proposal assumed receipt of original drawings of the MPLSM, ZMT, and ESP. The Burroughs and Rohr-Plessy proposals were based on receipt of original drawings only for the training consoles. Therefore, the Service determined that Emerson's offer did not comply with the RFP, and hence was conditioned. The Service concluded that even if original drawings of the MPLSM, ESP, and ZMT were available, it could not give them to Emerson for this contract. To do so would have given Emerson an unfair competitive advantage over the other offerors.

Before the contracting officer had decided on a course of action regarding the Emerson proposal, he received on November 1, 1974, a voluntary price reduction offer from Burroughs reducing its price to \$29,500,000, or about \$500,000 below Emerson's offer. Analysis of Burroughs' modified proposal indicated that the price reduction was conditioned upon the Service's approving design changes and augmenting approved vendor lists.

Concluding that the offers from both Emerson and Burroughs were now conditioned, the Service decided to hold limited negotiations to resolve the specific problems with each proposal. On November 5, 1974, the Service sent telegrams to Burroughs and Emerson requesting a negotiation session with each on November 7, 1974.

Emerson was advised that the Service did not intend to supply original drawings and wished to discuss the manpower estimate for the drawing effort. Burroughs was informed that its modified offer of November 1, 1974, contained ambiguities regarding design changes and augmenting approved vendor lists. Both telegrams concluded with this statement:

"Subsequent to the conclusion of this meeting, any price, technical or other revisions in your proposals, as may be appropriate, specifically related to that area discussed during negotiations will be accepted by the USPS and must be submitted by 2:00 p.m. EST November 8, 1974."

At 10 a.m. on November 7, the contracting officer and four other Service representatives met with Emerson. According to the contracting officer's memo regarding the negotiations--confirmed in interviews with us--Emerson was advised that original drawings would be furnished for the training consoles only and that copies of the other

equipment drawings would be furnished. Emerson then made a presentation increasing its engineering drawing effort. The contracting officer concluded that the Emerson offer now compared to other proposals regarding Service-furnished drawings and that Emerson's revised drawing effort was adequate.

At 11 a.m. on November 7, the same five Service officials met with Burroughs. According to the contracting officer's memo on the negotiation session--confirmed in interviews with us--Burroughs was asked to explain its modified offer of November 1, 1974. As Burroughs presented its offer, it became clear that the offer was conditioned upon Service approval of design changes and augmenting the approved vendor lists. Burroughs was informed that its revised offer was not acceptable because it did not comply with the terms and conditions of the RFP.

At the conclusion of each negotiation session, both firms were again told that the Service would accept revisions to their proposals relating to the areas discussed in the meetings and that revisions were due by 2 p.m. on November 8. The Service and Emerson disagree about the meaning of these instructions, as described in detail in the following section of this report.

On November 8, Emerson submitted a revised proposal increasing its drawing effort as discussed during its negotiation session. Emerson's price remained at \$29,987,000. Burroughs also submitted a revised offer on November 8. This offer eliminated the objectionable conditions and included a general price reduction to \$28,975,000.

The Service deemed both offers acceptable. That afternoon, the Service awarded the contract to Burroughs because it was the low acceptable offeror.

## CHAPTER 3

### EMERSON PROTEST

On November 8, 1974, the day the contract was awarded to Burroughs, Emerson and Rohr-Plessy were advised by telegram of the decision. In a November 9, 1974, letter, Emerson advised the Service that it was protesting the award. Subsequent to this, Emerson provided details of its protest to the Service.

The Postal Reorganization Act, Public Law 91-375, gives the Service wide latitude in conducting its procurements and exempts the Service from most Federal laws and regulations applicable to public contracts and procurement procedures.

Under the act, contract bid and award protest matters are under the jurisdiction of the Service's law department, which makes final decisions involving protest matters. On January 24, 1975, the department denied Emerson's protest. Each of Emerson's protest points is discussed below.

#### SERVICE SELECTION OF A TWO-STEP COMPETITIVE RFP

Emerson protested the Service's using a two-step competitive procurement rather than formally advertising the procurement. Formal advertising means purchase by competitive bids, and calls for awarding a contract to the responsible bidder whose bid is most advantageous to the Service, price and other factors considered. Under formal advertising, no negotiations are held. Emerson believes that the Service selected the two-step RFP approach in order to provide the greatest degree of flexibility to Service management in awarding the contract. According to Emerson, this flexibility made awarding the contract to Burroughs easier.

The Service's view is that the existing drawings were not in the form of a "Build to Print" Invitation for Bid necessary for formal advertising. The contracting officer said that the Service had drawings for each of the major subsystems (MPLSM, ZMT, ESP) but that some of these drawings had been prepared over the last 15 years and were not intended to be used for a system procurement. Therefore, the Service was not sure if the existing drawings were adequate. Since the Service had never before made a system buy, and in light of the questionable status of the drawings, the



contracting officer believed a negotiated procurement was a better approach. This gave the Service the opportunity to talk to the competing firms, if necessary, to make sure they understood what the Service wanted.

The contracting officer stated that Emerson did not object to the procurement method before the contract award. Our examination of contract files confirmed that this was correct and that none of the other competing firms had objected.

The law department's denial of Emerson's protest did not address this contention because it was subsequently withdrawn by Emerson. Service procurement regulations specify that an offeror can protest the procurement method used only until 5 days prior to receipt of proposals.

#### ALLEGED VIOLATIONS OF PROCUREMENT REGULATIONS

In its protest, Emerson contended that the Service violated its own procurement procedures in several instances. Specifically, it referred to section 3-805 of the Postal Contracting Manual covering selection of offerors for negotiation and award. Each of the points Emerson raised is discussed below.

#### Offerors were not given an equitable opportunity to revise proposals resulting from negotiations

Emerson maintained that the Service received and accepted a revised proposal from Burroughs that did not comply with the RFP or the specific Service instructions of November 5, 1974.

As discussed in chapter 2, by early November 1974 the Service had determined that it would be necessary to hold negotiations with both Burroughs and Emerson because (1) the Service had determined that the Emerson proposal was conditioned upon receipt of original drawings, although the RFP had stated that only copies of originals would be supplied and (2) Burroughs submitted an unsolicited modification offering a lower price which the Service believed was conditioned.

On November 5, the contracting officer advised Burroughs and Emerson by telegram of the problems in their respective proposals. The telegrams advised the offerors that the Service intended to hold limited negotiations on November 7 concerning problems in the proposals. Both of the telegrams concluded with the following instruction:

"Subsequent to the conclusion of this meeting, any price, technical, or other revisions in your proposal as may be appropriate, specifically related to the area discussed during negotiations, will be accepted by the USPS and must be submitted by 2 p.m. EST November 8, 1974."

Discussions held with Emerson and Burroughs on November 7, 1974, ended with advice to both firms that they could submit revisions related to the areas discussed. Emerson submitted a revision limited to those items discussed in the negotiations, but Burroughs submitted a general price reduction as well as modifying the items discussed during negotiations.

In its protest, Emerson contended that the instructions in the Service's telegram restricted revisions to only those areas discussed during negotiations. As a result, Emerson believed it was denied the opportunity to make "any revisions" to its proposal as permitted by the Service's procurement regulations. These regulations provide that all offerors shall be instructed as to the specified date of the closing of negotiations and that any revisions to their proposals should be submitted by that date. Through interviews and a review of the contract files, we found that the same instructions were given to both firms. Service officials advised us that one of the standard clauses in the RFP advised offerors of their right to offer voluntary amendments to their proposals prior to the closing of negotiations.

The contracting officer maintains that neither Burroughs nor Emerson was told that it could not offer a voluntary price reduction at any time prior to the closing of negotiations. However, Emerson officials informed us that their notes, taken at the negotiation session on November 7, state that Service officials emphasized that the revisions to the proposal must be restricted to the items discussed at the negotiation session. We were unable to resolve these conflicting positions.

The law department's decision denying Emerson's protest states that there was no evidence in the negotiation memorandum or the contract file indicating that a statement limiting revisions to the items discussed in negotiations was made by Service officials. The decision further states that since Emerson had furnished no concrete evidence to the contrary, the law department concluded that no such statement was made.

With regard to the wording of the telegrams, the law department's decision states:

"The wordage of the telegrams was unfortunate but not, we think, fatal. The language used plainly discouraged the submission of revisions unrelated to the areas discussed, but it did not purport to rule them out, and it is well established that every proposer has a right, as long as negotiations are open, to change his price for any reason whatever."

Offerors were not informed of  
closing of negotiations and request  
to submit best and final offers

Service procurement regulations state that, whenever negotiations are conducted with multiple offerors, all of them must be informed of the specific negotiation closing date and that any revisions to proposals must be submitted by that date.

Service procurement officials maintain that the telegrams of November 5 were requests for best and final offers. Our review of the records showed that those telegrams were the only notice given the offerors as to the closing of negotiations. The telegrams clearly provided that proposal revisions resulting from negotiations must be submitted by November 8, 1974, but did not specify this date as the negotiation closing date.

The law department's decision admonished the contracting officer for failure to adhere to the procedural requirements of the Postal Contracting Manual. The decision states:

"We have no doubt that the procedures followed by the Contracting Officer here did not conform to the regulatory language. We can find no express notice given either Burroughs or Emerson that negotiations were being conducted or that best and final offers could be submitted by November 8, 1974--the only cutoff date specified. Greater care plainly must be taken by Postal Service contracting officers to adhere faithfully to both the letter and the spirit of the procedural requirements set out in the Postal Contracting Manual."

The decision concluded, however, that based on the circumstances preceding and following the issuance of the November 5 telegram, Emerson knew or should have known that November 8 was the closing date for the negotiations.

Preaward survey alerted Burroughs  
that Emerson was low offeror

Postal procurement regulations state that no offeror shall be advised of its price proposal's standing relative to those of other offerors. In the RFP, offerors were advised that after evaluation of technical and pricing proposals a preaward survey would be made of the primary candidate. Emerson contended that the preaward survey conducted by the Service alerted Burroughs that Emerson was the low offeror.

Postal officials stated that, as in this procurement, preaward surveys are normally conducted after the evaluation of technical and price proposals. At the time of a preaward survey, the Service normally has selected the firm to be awarded the contract, provided the preaward survey shows the firm to be acceptable. The Service's policy is not to accept modified proposals from offerors once a preaward survey is made unless they are deemed to be in the best interests of the Service.

In this case, the Service conducted a preaward survey of Emerson, unaware that Emerson had submitted a conditioned proposal. Shortly after the survey, the Service realized the conditioned nature of Emerson's proposal. At the same time, Burroughs offered an unsolicited proposal reducing its price below Emerson's. Burroughs' revised offer also appeared to the Service to be conditioned. Therefore, the Service believed that negotiations should be held with both firms.

The Director, Office of Contracts, said Burroughs informed him that it was aware that a preaward survey had been performed at Emerson before submission of its revised proposal. We found no evidence that Service personnel had informed Burroughs of this preaward survey.

The law department concluded that the preaward survey was not prejudicial to Emerson because negotiations were subsequently held insuring that offerors were on equal footing.

Emerson's price was leaked to Burroughs  
and/or Burroughs was given implicit  
or explicit pricing instructions

Postal procurement regulations state that, whenever negotiations are conducted with more than one offeror, no indication of a price that must be met to obtain further consideration shall be given to any offeror. To do so

would constitute an auction. Likewise, no offeror shall be advised of its price proposal's standing relative to other offerors. Emerson contended that its price proposal was leaked to Burroughs, or Burroughs was given implicit or explicit pricing instructions.

In the law department's decision denying the protest, this point was determined to be without merit. Emerson did not support its protest with any evidence of a price disclosure. The law department examined the entire contract file and found in it no evidence of a price disclosure.

This finding is confirmed by our own review of the contract file. Additionally, we interviewed those Service officials who had access to pricing information prior to contract award. They all denied leaking any pricing information or providing pricing instructions to any of the offerors. Further, these officials stated that no pricing information was discussed with Service personnel whose official duties did not require pricing knowledge.

Changes to the technical data package  
were made during negotiations without  
issuing written amendments to the RFP

Postal procurement regulations state that if during negotiations a substantial change occurs modifying the scope or statement of work, the change shall be made in writing as an amendment to the RFP and a copy shall be furnished to each prospective contractor. Emerson asserted that the RFP provided that the Service furnish original drawings to the successful offeror. The RFP should have been amended in writing, Emerson contended, to reflect the change to contractor-supplied original drawings.

The law department's decision said that the RFP did not provide for the Service to furnish original drawings and that Emerson's position was not valid. Our review supports this position.

## CHAPTER 4

### CONCLUSIONS AND AGENCY COMMENTS

#### CONCLUSIONS

Although the Service substantially followed its procurement regulations and procedures, it could have improved two steps in the procurement: (1) technical proposal evaluation and (2) the closing of negotiations.

First, the Service misunderstood the availability of original drawings and thus did not discover the conditioned nature of Emerson's technical proposal until after the evaluation of proposals was complete and a preaward survey conducted. The mistake caused the Service to conduct negotiations to insure that the offerors were on equal footing.

Second, the Service could have improved its notice to offerors that negotiations were being closed. Service procurement regulations state that when negotiations are closed, offerors are to be advised that any revisions to proposals should be submitted by the specified date of closing. However, in stating that revisions to proposals would be accepted specifically related to areas discussed during negotiations, the Service's instructions did not inform the competing firms of their right to offer proposal revisions unrelated to the matters discussed during negotiations. In this respect, the Service deviated from its own procurement regulations.

With the exception of these two areas, the procurement appeared to be well handled and in accordance with Service procurement regulations. Although there is no conclusive evidence that the actions of the Service resulted in a competitive advantage to any of the competing firms, we believe that the deficiencies noted in the procurement could have had a bearing on which firm received the contract.

Considering the Service's original plan not to hold negotiations if the initial offerings included an acceptable proposal, it seems that had the conditional nature of Emerson's proposal been identified and corrected during proposal evaluation, this could have eliminated the need for negotiations and could have resulted in Emerson being awarded the contract.

Less certain, but still possible, is that had Emerson been informed specifically that negotiations were closing and that best and final offers should be submitted before

on a specific date, it too may have offered a price below that which it had previously submitted.

Service regulations require that explicit instructions regarding the closing of negotiations be given all offerors. The Service's law department concluded that this was not done for the contract in question, but maintained that the failure to do so did not prejudice the award in favor of any of the competing parties. The law department has reminded contracting personnel to follow Service regulations in the future.

As previously stated, the Service has the legal authority to decide bid protests. In this case, the Service ruled that the deficiencies in the procurement did not warrant overturning the award of the contract to Burroughs.

#### AGENCY COMMENTS

On June 20, 1975, the Postmaster General replied to our report and agreed with the facts and conclusions in it. (See app. II.)

COMMITTEES:  
 AERONAUTICAL AND SPACE SCIENCES  
 ARMED SERVICES  
 FOREIGN RELATIONS  
 INTERNATIONAL AFFAIRS  
 INTERNATIONAL EX OFFICIO  
 NUCLEAR ENERGY  
 POLITICAL POLICY  
 DEMOCRATIC STEERING

STUART SYMINGTON  
 MISSOURI

STANLEY R. FINE  
 ADMINISTRATIVE ASSISTANT

*United States Senate*

WASHINGTON, D.C. 20510

December 13, 1974

B-173,25

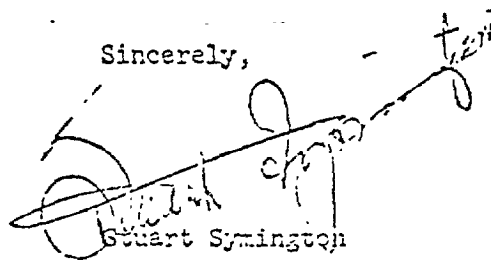
The Honorable Elmer B. Staats  
 Comptroller General of the  
 United States  
 Washington, D.C. 20548

Dear Elmer:

Acknowledging your letter of December 12, it was our intention to request an audit review of the Postal Service procurement award to the Burroughs Corporation, and I would appreciate that kind of examination being undertaken as you suggest.

Many thanks for letting us know of the House consideration of giving the General Accounting Office jurisdiction over protest bid matters in connection with the Postal Service procurements.

Sincerely,



Stuart Symington

C... microfilmed  
 was of poor quality





THE POSTMASTER GENERAL  
Washington, DC 20260

June 20, 1975

Mr. Victor L. Lowe  
Director, General Government  
Division  
U. S. General Accounting Office  
Washington, D. C. 20548

Dear Mr. Lowe:

This refers to your proposed report to Senator Symington entitled "Review of Letter Sorting Machine Procurement."

The report is correct as to the basic facts of the procurement in question, and we agree with its conclusion that the Postal Service did substantially follow its procurement procedures and that the actions of the Service were such as not to provide a competitive advantage to any of the competing parties, though we could have done a better job in detecting sooner the conditional nature of the Emerson Electric Company's proposal and in wording our instructions on the closing of negotiations.

We appreciate your affording us an opportunity to review this report.

Sincerely,

A handwritten signature in cursive script, appearing to read "Benjamin F. Bailar".

Benjamin F. Bailar