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COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

~~CONFIDENTIAL~~

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cl+ The Honorable Alan Cranston
R United States Senate

74-0151

Dear Senator Cranston:

Your November 15, 1973, letter requested that we investigate several areas of the operations of the United States Postal Service. It was agreed that separate reports would be issued as our work on the various matters was completed. This report deals with the allegation in an article in the August 24, 1973, Wall Street Journal that a contract was awarded to Mr. Charles N. Burnaford, a friend of the Postmaster General, without competitive bidding. 52

As your office agreed, the scope of our work on this item was limited to (1) evaluating the information in a report already prepared on this matter by the Postal Service's internal auditors and (2) determining whether the contracts comply with Federal Procurement Regulations and the Postal Contracting Manual (PCM).

There was no evidence that the Postmaster General interceded with postal contracting officials in behalf of Mr. Burnaford. It is likely, however, that the actions of these officials in awarding these contracts were influenced by their awareness of the Postmaster General's high regard for Mr. Burnaford. We noted (1) questionable justification for the use of sole-source contracting, (2) circumvention of the use of contracts by treating work performed as claims, and (3) the failure to verify the contractor's costs. The Postal Service's internal auditors have recommended strict enforcement of PCM requirements and revisions of existing procurement policy and practices, if needed. We believe compliance with these recommendations would be helpful in preventing the questionable procurement procedures we noted.

These matters are discussed below.

ALLEGATIONS CONCERNING
NON-COMPETITIVE CONTRACTING

The Wall Street Journal article contends that a \$821,000 contract was let without competitive bidding to a friend of the Postmaster General--Mr. Charles N. Burnaford.

Available information shows that Mr. Burnaford's involvement in postal matters began before the Service was established. Since June 1970, he has received about \$815,000 for advertising and promotional work performed for the Service. (See enclosure.)

During an interview conducted by the Service's internal auditors, Mr. Burnaford stated that his first contact with the Postmaster General, as a postal official, probably took place in the middle of 1969. He stated

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that he was in Washington, D. C., at the time and decided to renew his acquaintance with Mr. Klassen, who was then Deputy Postmaster General. They first became acquainted when both were working for the American Can Company.

At this meeting, the Postmaster General invited Mr. Burnaford to attend a meeting at which officials of the Post Office Department were to discuss how to get the story of postal reorganization across to the public. Mr. Burnaford stated that he had no further contact with the Postmaster General concerning this matter.

According to the internal auditors' interview and Service records, Mr. Burnaford was contacted by another postal official early in 1970 to discuss a program to educate the public on postal reorganization. In April 1970 he submitted a proposal on this matter and in June 1970 was awarded a contract.

Available records indicate that, from the award of the initial contract until early 1973, there were occasional contacts between Mr. Burnaford and the Postmaster General that were a natural result of Mr. Burnaford's performing work authorized by various postal officials.

In early 1973, Service records show, and Mr. Burnaford confirms, that the Postmaster General called Mr. Burnaford at 5:30 am. and requested that he attend a meeting the same morning in Washington to discuss what could be done about deteriorating mail service. After this meeting Mr. Burnaford performed several projects connected with the Service's attempts to improve mail service. These projects were authorized by various postal officials and were performed without formal contracts. The interviews of the internal auditors with the officials authorizing these projects indicated that the Postmaster General had not exerted any pressure to have Mr. Burnaford perform this work.

EVALUATION OF PROCUREMENT PROCEDURES FOLLOWED IN OBTAINING SERVICES OF BURNAFORD & CO., INC.

The services provided by Burnaford & Co., Inc. (Burnaford), were obtained through four formal contracts, three purchase orders, and five claims. The related dollar values were \$568,163, \$8,753, and \$237,590, respectively.

A claim is considered to exist, for purposes of this report, in those instances when the postal officials orally authorized Burnaford to perform a task; the task was performed; an invoice was submitted for services rendered; and then an "Agreement for Payment for Services Rendered" was signed by both parties setting forth in writing after completion of the task what had been agreed to orally.

The methods used to engage Burnaford were questionable primarily from the standpoint of questionable justification for not considering

other sources. Other questionable procurement procedures included (1) having expensive projects undertaken on the basis of an oral understanding and (2) accepting Burnaford's cost proposals without sufficient cost and price analysis. These matters are discussed in greater detail below.

Sole-source procurement

The initial contract was negotiated with Burnaford without soliciting proposals from any other firms. Both the Federal Procurement Regulations and PCM require that negotiated procurements be on a competitive basis to the maximum extent possible.

Negotiations with Burnaford were justified on the basis that he was the only source for the supplies and services. Although this represents an acceptable justification under the regulations for noncompetitive negotiations, we believe the justification was questionable in this instance because:

- There was no indication that any attempt was made to identify other firms capable of providing the services.
- Burnaford acknowledged that other firms could have performed this work.
- Certain postal officials questioned the validity of the sole-source justification for all or some of the work.

The importance of awarding the initial contract on a sole-source basis is magnified in that it served as a basis to justify the follow-on work by Mr. Burnaford. Thus, postal officials responsible for subsequent work stated that Burnaford was selected because of his knowledge of postal operations and because his work was of a high quality.

According to a Postal Service official, the Service's inhouse personnel could have performed certain aspects of the work. However, they doubted that their own personnel could have handled all the advertising and promotional work because of staff limitations when the contracts were awarded.

Treating work performed as claims

Payments for five of the projects performed by Burnaford were handled as claims. This practice bypassed the normal procurement function. Service memorandums indicate that this procedure was used to avoid after-the-fact contracting.

In these cases, postal officials authorized Burnaford to perform a certain project without a formal contract covering the work to be

performed. Burnaford then submitted invoices requesting reimbursement. The Service and the contractor then executed an "Agreement for Payment for Services Rendered."

This practice, according to PCM, constituted a deviation from normal procurement procedures. In such cases, PCM requires that deviations be approved in advance and that each submission requesting approval of any deviations contain as a minimum:

- Identification of the PCM requirement from which deviation is sought.
- A full description of the deviation and the circumstances under which it will be used.
- A description of the deviation's intended effect.
- A copy of any pertinent document, including forms or clauses, or the proposed contractor's request, if any.
- A statement of the period for which the deviation is needed.
- Detailed reasons supporting the request.

The contract files did not contain documentation showing that PCM procedures had been followed. The files generally contained limited or no supporting documentation of the reasons for deviating from normal contracting procedures.

Although the above method of obtaining services represents a significant deviation from sound contracting procedures, there appears to be no question as to the legality of the payments.

An Assistant General Counsel for the Postal Service ruled, in a similar case, that when an officer or agent of the Government has authority to enter into a contract for supplies or services and the Government receives those supplies or services without an express contract, the courts will imply a promise to pay.

The Service cited as its authority for making such payments 39 U. S. C. 401(8). We believe that the cited authority is a proper legal basis for paying for these projects.

Cost not verified

Because the claims discussed in this report resulted from bypassing normal contracting practices, PCM is silent on their handling. Although there were no procedures for settling such claims, prudence alone should have pointed up the necessity to insure the reasonableness of the amounts claimed before payment was made. However, in four of

the five claims noted above, the Service paid the contractor the amounts shown on his invoices without an audit to determine their reasonableness.

The last of the five claims was settled after the Wall Street Journal article. For this claim, the Procurement and Supply Department requested that an audit evaluation and verification be made to establish the reasonableness and allowability of the invoiced costs.

According to the internal auditors:

- The contractor did not have an adequate cost accounting system.
- Free-lance writers were engaged on an as-needed basis. Fees for their services were established on a lump-sum basis, although Burnaford's invoices were based on the hours worked by the writers.
- The free-lance writers prepared informal time records showing labor allocation to specific jobs. However, the contractor destroyed job sheets and time records after billings were prepared.
- For billing purposes the contractor used hourly rates which were not subject to verification of reasonableness.

According to a Service official, the final claim was settled for \$114,000--this amount is \$20,421.01, or about 15 percent, less than the amount claimed by the contractor.

For the four formal contracts awarded Burnaford:

- The cost and pricing data submitted by the contractor was not in sufficient detail to determine the reasonableness of proposed prices. PCM provides that, when any price must be negotiated largely on the basis of cost or pricing data submitted by the contractor, it is essential that the data be accurate, complete, and current. Burnaford's price proposals generally consisted of a total dollar figure for performing various tasks without any breakdown of the various elements of cost, such as material and labor, in the total.
- PCM required an audit of the contractor's proposal for two of the four contracts since the contracts exceeded \$100,000. PCM provides for waiver of this requirement when adequate cost or pricing data is available to the contracting officer. No audits were performed and the required waiver was issued for only one of the contracts. Pricing data in the first Burnaford contract was used, in part, to justify the waiver. Since the first contract had not been audited, there was no basis for assuming that the pricing data was reasonable.

--PCM states that some form of price or cost analysis should be made for every negotiated purchase. It also requires that, after each negotiation, a memorandum be prepared setting forth the principal elements of the price negotiation for inclusion in the contract file and for the use of any reviewing authorities. The contract files available to us contained no memorandum of negotiation, and for only one contract was there any indication that some form of price or cost analysis had been made. For each contract the amount proposed by the contractor was accepted as the contract price.

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The Postal Service agrees with the facts presented in this report. We do not plan to distribute this report further unless you agree or publicly announce its contents.

Sincerely yours,

R.F. KELLER

Deputy

Comptroller General
of the United States

Enclosure

SUMMARY OF WORK PERFORMED BY BURNAFORD

<u>Contract, purchase order, or claim number</u>	<u>Method</u>	<u>Subject</u>	<u>Final amount</u>
70-1-01529	Contract	Multimedia communication campaign for educating postal employees and the public on the inauguration of the U. S. Postal Service.	\$343,253.03
72-1-02439	Contract	Promotion under the heading of Serving America to convey to postal customers the Service's commitment to provide excellent and courteous service and to impress on employees the critical importance of service and courtesy.	164,078.75
72-1-01854	Contract	Audiovisual presentation of a specific part of the Bulk Mail Network Program.	30,000.00
73-00659	Contract	Preparing, planning, copy writing, and layout of flip charts for the Job Evaluation Program.	30,831.04
Total contracts			<u>568,162.82</u>
73-00562	Informal purchase	Copies of Burnaford's presentation on the National Bulk Mail System in 35 mm slide and tape form and a filmstrip/cassette projector.	1,875.00
72-1-02013	Informal purchase	Consulting and development services on the Service's communications programs.	6,081.09

Contract, purchase
order, or claim
number

Method

Subject

Final amount

72-1-02497

Informal
purchase

Editing three filmstrips
and cassettes in connection
with the Bulk Mail Network.

797.00

Total purchase orders

8,753.09

73-02735

Claim

Material and services
for developing a pro-
motion program for
Postal Week '73.

\$43,254.48

73-02734

Claim

Developing a coordinated
presentation relating
to Serving America.

9,070.46

73-01702

Claim

Preparing film segment
and developing of employee
communications/motivation
plan.

37,290.00

73-01701

Claim

District managers con-
ference on improving
mail service.

33,974.63

74-00671

Claim

Various management
conferences and
meetings.

114,000.00

Total claims

237,589.57

Grand total

\$814,505.48