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## REPORT OF THE COMPTROLLER GENERAL OF THE UNITED STATES



LM104240

# U.S. Railway Association's Subsidy For Its Executive Dining Room And Its Award Of Two Contracts

The financial records of the U.S. Railway Association's executive dining room do not adequately show the extent to which the dining room is self-supporting. The Association provided \$200,000 for the operation of the dining room from July 1974 through June 1977.

GAO analyzed two contracts awarded by the Association, to determine whether they would have conflicted with Federal Procurement Regulations had they been applicable. The advance notice the Association gave to selected contracting firms for one contract departs from the Federal Procurement Regulations and from good procurement practices in general. The other contract conformed to the regulations.

RELEASED

NOVEMBER 7, 1977

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

B-164497(5)

The Honorable Sam Nunn  
Vice Chairman  
Permanent Subcommittee on  
Investigations  
Committee on Governmental Affairs  
United States Senate

The Honorable Charles H. Percy  
Ranking Minority Member  
Permanent Subcommittee on  
Investigations  
Committee on Governmental Affairs  
United States Senate

This report is in response to your joint letter of March 11, 1977, requesting us to review certain activities of the U.S. Railway Association. In addition to the information we presented to you informally during our July 7, 1977, meeting, we have compiled detailed information on the four questions you raised. Our detailed findings are included as appendix I.

Our review shows that the financial records of the Association's executive dining room do not adequately reflect the extent to which the dining room is self-supporting. We found that the Association had provided financial support for the operation of the dining room totaling about \$200,000 between July 1974 through June 1977.

Pursuant to your request, we also reviewed the award of two contracts by the Association to determine whether they would have been in conflict with Federal Procurement Regulations had they been applicable. It should be pointed out, however, that contracts awarded by the Association are legally exempt from the Federal Procurement Regulations.

During our analysis of one of the contracts, we learned that the Association gave two firms advance notice of a solicitation, while a competitor, who did not get advance notice, canceled his plan to compete because he could not

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submit his proposal within the period set by the Association. This advance notice to selected firms would have violated the Federal Procurement Regulations had they applied and was contrary to good procurement practices in general. The procurement practices in effect at the time these contracts were awarded were canceled in October 1976 when the Association issued a new order on procurement aimed at strengthening the Association's procurement process.

As arranged with your office, we plan no further distribution of this report until the Subcommittee completes its overall review of the Association and notifies us that our report may be released to other interested parties. We also obtained comments from the Association on matters covered in this report and included them as appendix II.

ACTING

*R. M. Kistner*  
Comptroller General  
of the United States

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ABBREVIATIONS

Conrail	Consolidated Rail Corporation
EDR	executive dining room
FPR	Federal Procurement Regulations
USRA	United States Railway Association

U.S. RAILWAY ASSOCIATION'S SUBSIDY FOR ITS  
EXECUTIVE DINING ROOM AND CERTAIN CONTRACTS

To deal with the economic threat posed by the bankruptcies of the Penn Central and 6 other railroads serving 17 northeastern and midwestern States and the District of Columbia, the Regional Rail Reorganization Act of 1973 (Public Law 93-236) was signed into law in January 1974. The United States Railway Association (USRA), a nonprofit, mixed-ownership Government corporation, was created under the act and incorporated in the District of Columbia on February 1, 1974.

Its purpose, as outlined in the act, was to plan and finance the reorganization of the bankrupt railroads in the Northeast and Midwest into an economically viable system capable of providing safe, efficient, and reliable rail service to meet the needs of the people and the economy of the region and Nation. On July 26, 1975, USRA sent its final system plan for reorganizing the bankrupt railroads to the Congress.

The act also required the establishment of a profit-making corporation called the Consolidated Rail Corporation (Conrail) to operate and modernize parts or all of the restructured system USRA designed. Selected rail properties of the bankrupt railroads were conveyed to Conrail on April 1, 1976.

USRA's responsibilities were greatly altered by the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94-210) enacted on February 5, 1976, and the conveyance of rail properties to Conrail. USRA has three primary missions under this act: (1) managing the Government's defense in the complex litigation stemming from the reorganization, (2) monitoring Conrail's performance, and (3) investing \$2.1 billion in public funds in Conrail.

By designating USRA a mixed-ownership Government corporation, the Congress empowered it with freedom from certain standard Government procedures and with greater administrative flexibility than generally accorded traditional departments and agencies of the executive branch. The manner in which USRA officials have exercised this freedom and flexibility has generated concern among some congressional parties. The Vice Chairman, Permanent

Subcommittee on Investigations, Senate Committee on Governmental Affairs and its Ranking Minority Member, asked us to assist the Subcommittee, which is conducting a preliminary inquiry into selected USRA procedures, by analyzing certain USRA records. More specifically, we were asked to review (1) the financial records of USRA's executive dining room to determine how accurately they reflect its true financial condition and (2) two contracts to determine whether they conflicted with Federal Procurement Regulations.

This is one of a series of reviews performed by our office pursuant to congressional requests or required by law concerning USRA administrative practices. In November 1975 we issued a report requested by the Chairman, Subcommittee on Oversight and Investigations, House Committee on Interstate and Foreign Commerce, entitled "Improvements Needed in Procurement and Financial Disclosure Activities of the U.S. Railway Association." In addition, we have sent two reports to the Congress dated March 21, 1975, and July 8, 1977, concerning our examination of USRA's financial statements and other matters concerning its operations. At the direction of several congressional parties, we are currently involved in a review and comparison of selected USRA administrative practices with those of other Government corporations.

#### USRA's EXECUTIVE DINING ROOM (QUESTION 1)

According to USRA officials, dining facilities with appropriate business privacy to meet USRA's needs were not available in or near its offices. In June 1974, USRA officials initiated a project to establish an executive meeting and dining facility for USRA executives. A consultant was hired to help USRA in this undertaking. The purpose of the executive dining facility was to provide an additional conference facility for large meetings called by key USRA officials. More important, one of the principal functions of the executive dining facility was to provide a meeting place which was conducive to private, informal discussions and which offered easy accessibility to help insure that the continuity of business discussions was not upset or lost during intermission for meals.

In a letter dated September 27, 1977, USRA officials stated that USRA has had and will continue to have unusual needs for meeting with representatives of State governments,

Federal agencies, law firms, congressional members and staff, railroads, and users of rail transportation. USRA officials believe that, if the meetings are to be held at USRA's location, it is essential that an appropriate dining facility be available in the building so that meetings can continue throughout the lunch period.

The executive dining room (EDR) began operation in September 1974 and is generally open Monday through Friday from noon to 2 p.m.; it offers a small selection of entrees, sandwiches, soups, salads, and beverages, including beer, wine, coffee, tea, milk, and soft drinks. USRA employees at the division chief level or above are eligible for membership in the EDR at a fee of \$50, which is returned at the time the employee terminates membership in the EDR. The price for all lunches, regardless of the item(s) ordered, is \$3.

The EDR staff consists of a manager, two part-time cooks, and a waitress. The EDR physical facilities include a kitchen, the dining room, and a small office. The kitchen is equipped with many appliances, including a trash compactor, dishwasher, refrigerator, oven, toaster, blender, and an electric can opener.

The Subcommittee's inquiry concerning the EDR and our responses follow.

- (A) Review the books of USRA's executive dining room to determine how accurately they reflect its true financial condition. Federal funds support this operation. Factor into the actual profit and loss the salaries paid to all persons USRA engaged to work full- or part-time to support the operation of the dining room.

We found that the EDR was not a self-supporting operation and depended on financial assistance from USRA's administrative appropriations. Further, the records and financial statements of the EDR do not fully disclose all relevant financial information pertaining to the costs absorbed by USRA.

The EDR's fiscal affairs are accounted for and maintained separately from USRA's other accounting records. Prior to an internal audit of the EDR, completed in October 1975, the EDR accounting records consisted of only a check register. The EDR manager expanded the accounting records to include a billings register, a cash disbursements journal, and a cash receipts journal in response to the internal audit report.

The EDR accounting records were designed mainly to trace the flow of cash. For example, the cash disbursements journal is a summary of the outflow of cash, whereas the cash receipts journal represents a record of the inflow of cash and the billings register provides data concerning cash due to and received by the EDR. Hence, entries are made in the EDR accounting records only when direct cash payments are received or expected or when cash is expended.

No accounting entry was made on the EDR books to record expenses USRA absorbed because USRA paid vendors directly instead of channeling the funds through the EDR. EDR employees' salaries were also accounted for in USRA's financial records but omitted from the EDR's. Although the August 31, 1975, financial statements are annotated to show that salaries of the EDR employees have been excluded, none of the other EDR financial statements disclose any information regarding the extent of financial support USRA provided to the EDR.

We tested the EDR accounting records and found that they were generally maintained accurately. For example, our review showed that EDR members had been billed for the proper amount and payments had been cross-referenced from the billings register to the cash receipts journal. We did not find any discrepancies in the cash receipts journal and all receipts had been promptly deposited in the bank and to the EDR checking account.

We found some discrepancies in the EDR's cash disbursements journal. For example, of the 157 checks we reviewed totaling about \$29,000, we could not find documentation to support 6 checks amounting to \$1,055. Although the six checks were issued from November 1975 to September 1976, all six were payable to the same company and had the proper authorizing signature. The EDR manager could not offer any explanation for the discrepancies.



Our review indicated that USRA provided financial support totaling about \$200,000 since July 1974 through June 1977. USRA purchased EDR's original furnishings, kitchen accessories, and appliances with funds from its appropriation for administrative expenses. In addition, certain EDR services and fees incurred under contracts originally entered into by USRA and salaries of the four EDR employees continue to be paid out of USRA's administrative appropriations.

In a letter dated September 27, 1977, USRA officials told us that a number of Federal agencies operated EDRs. According to USRA, it is common practice in these installations for the personnel to be paid from appropriated funds, as in the Departments of Transportation and Defense.

The following table summarizes the extent of funding provided to the EDR.

<u>Nature</u>	<u>Amount</u>
Salary of consultant	\$ 3,000.00
Equipment and furnishings	21,081.00
Salaries and fringe benefits	106,049.51
Payments to contractor for services	8,941.78
Payment for linen services	1,284.63
Space rental	<u>61,275.73</u>
<b>Total</b>	<b><u>\$201,632.65</u></b>

USRA officials also noted in their September 27, 1977, letter that support services, such as space rental and equipment and furnishings, were normally funded by the Federal Government for cafeterias available to Federal employees. USRA believes, therefore, that these items should be eliminated from our total of \$200,000 reducing the amount to \$120,000.

To insure that the total financial support provided with Federal funds is properly computed, all funding provided to the EDR must be included. On the basis of further discussions we had with representatives of the General Services Administration, we agree that Federal agencies which have cafeterias use appropriated funds for rented space. These cafeterias,

however, unlike the EDR, are open to all agency employees. In addition, equipment for these cafeterias is purchased by and remains the property of the General Services Administration.

EDR's financial statements show the cumulative financial activity during the fiscal year which extends from September 1 to August 31. The table below, summarizing the EDR's profit/loss history since its beginning, indicates that, for the period September 1, 1974, through May 31, 1977, the EDR showed a profit of \$3,490.

Summary of the Profitability of the EDR

<u>Period</u>	Profit or loss (-) for the <u>period</u>	Cumulative profit since <u>inception</u>
9/1/74 to 8/31/75	\$ 6,502	\$ 6,502
9/1/75 to 8/31/76	-5,659	843
9/1/76 to 5/31/77	2,647	3,490

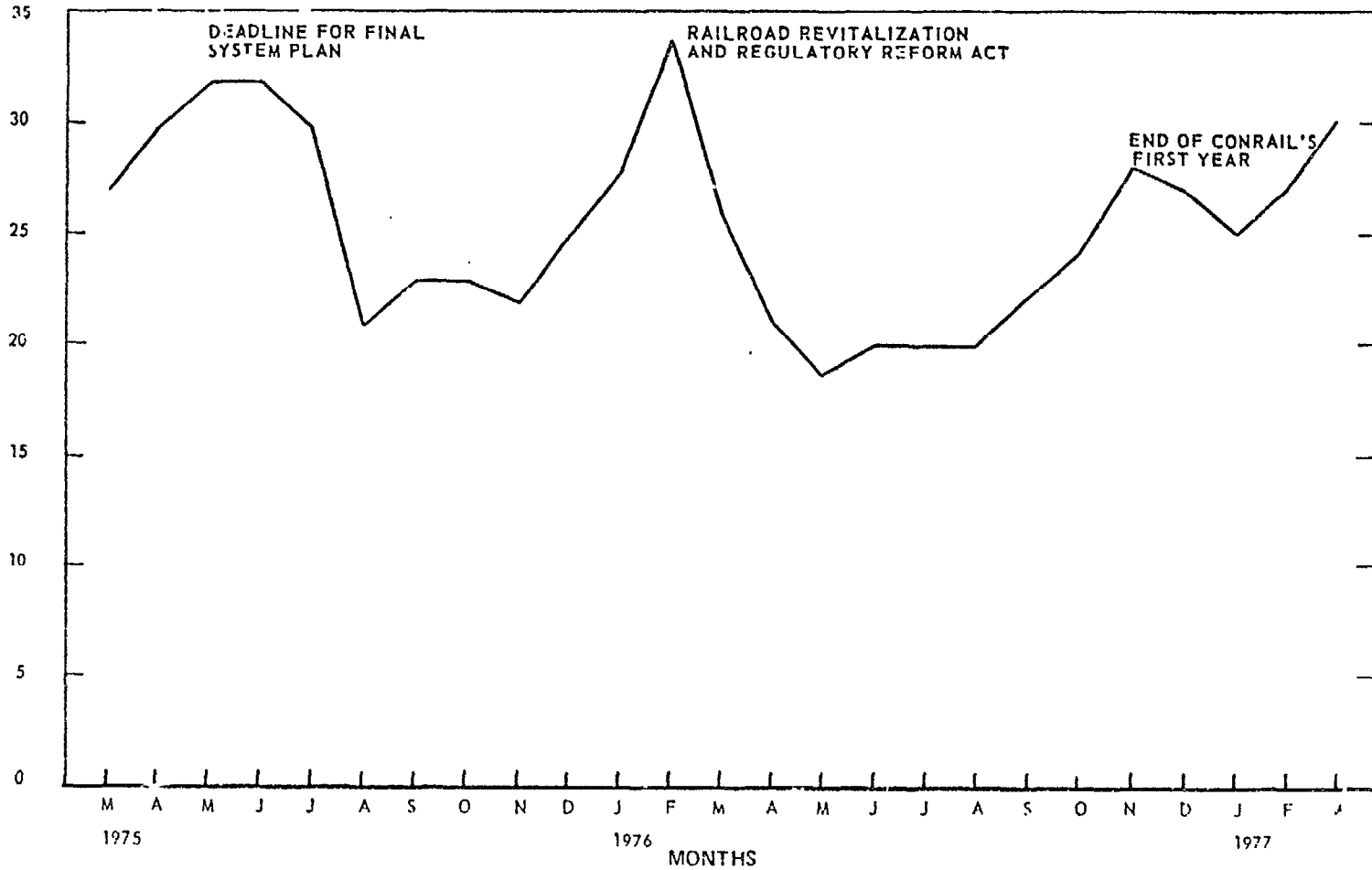
As previously noted, gross salaries of EDR employees, however, have been excluded from EDR's computation of profit and loss. Had the salaries and fringe benefits been factored into the EDR's profit and loss, the result would be a cumulative loss since the first days of its operations of about \$102,000. According to USRA officials, however, the EDR was modeled after the Department of Transportation executive dining room and was not designed so that it would be financially able to bear all expenses related to its operations. As a result, the prices were established only to cover the costs of consumable items, and the EDR staff would be paid from appropriated funds.

(B) Compute the average number of lunches served per day.

EDR was open for business 468 days from March 17, 1975, to March 31, 1977, and served a total of 11,841 lunches. Based on this data, the EDR served an average of 25 lunches each day. The following graph shows that the number of lunches served increased near critical target dates such as the deadline for the final system plan and declined during the summer vacation months.

# AVERAGE NUMBER OF LUNCHES SERVED DURING THE PERIOD MARCH 1975 TO MARCH 1977

AVERAGE NUMBER OF LUNCHES SERVED EACH DAY



APPENDIX I

APPENDIX I

- (C) Determine how the EDR's deficit of \$5,600 was erased through minor economies.

During its second full year of operation (9/1/75 to 8/31/76), the EDR lost \$5,659. The EDR's financial statements at May 31, 1977, show that EDR had made a profit of \$2,647 by that time in its third year of operation, mainly because USRA absorbed some expenses. However, increases in membership and the number of meals served, along with some changes in purchasing practices, were also contributing factors.

The following table shows the direct relationship between the EDR's profitability and the financial support USRA provided. It shows that the EDR was more profitable when USRA's financial contributions were larger and that, when USRA's financial assistance decreases, the EDR profits diminish.

Correlation Between  
USRA Direct Payments  
and the EDR Profitability

<u>Type of expenses USRA paid</u>	<u>Sept. 1974 to Aug. 1975</u>	<u>Sept. 1975 to Aug. 1976</u>	<u>Sept. 1976 to May 1977</u>
Service fees	\$7,176	-	\$1,766
Linen service	918	-	367
Total	<u>\$8,094</u>	<u>-</u>	<u>\$2,133</u>
Profit or loss(-) for the period	<u>\$6,502</u>	<u>\$-5,659</u>	<u>\$2,647</u>

As shown above, USRA provided considerable financial assistance to the EDR in the form of service fees charged to the EDR under the terms of a contract with the firm that owned the building where USRA's offices were located and operated a restaurant on the ground floor of that building. Weekly billings under the contract usually reflected the following charges: food purchased, a standard service fee, and a management fee.

According to USRA's Comptroller, the standard weekly service fee of \$57.44 includes the privilege of using additional freezer and refrigerator storage space operated by the restaurant and the restaurant's loading dock and of ordering EDR food items through the restaurant. The Comptroller speculated that the additional management fee was the contractor's profit factor.

Our review of the EDR's operations showed that the contractor's services were not being used enough to warrant the cost involved. The EDR manager told us that all the food served in the EDR, with the exception of reuben sandwiches, was prepared in the EDR kitchen. She told us also that the space reserved in the restaurant's refrigerator compartment was frequently used to store large quantities of produce, but that the freezer was used less frequently. She said she was reluctant to use the restaurant's refrigerator and freezer storage space because items were lost on several occasions.

From September 1974 through May 1977, a total of \$30,000 had been paid to the contractor as shown below.

Actual cost of food items	\$15,290.74
Standard weekly fee of \$57.44	7,596.31
21 percent fee	5,303.15
Other	<u>2,110.20</u>
Total	<u>\$30,300.40</u>

- (D) Identify other quasi-public corporations which have executive dining rooms and which ones require subsidies, as well as how much these subsidies are for each dining room.

In a separate request letter, several congressional committees asked us to review selected administrative practices of USRA and compare them to the practices of other Government corporations. As agreed with the Subcommittee, we selected the following Government corporations for our review:

- Legal Services Corporation
- Corporation for Public Broadcasting

--National Rail Passenger Corporation (Amtrak)  
--Conrail 1/

Conrail is the only one which has an EDR. Conrail has been operating an executive dining facility at its Philadelphia, Pennsylvania, headquarters since November 1976. Conrail officials said that kitchen facilities were already in place and, therefore, Conrail did not incur the substantial cost of installing one.

Membership in the dining facility is offered to selected Conrail employees after the following factors are considered: (1) level of compensation, (2) level of responsibility, (3) reporting level, and (4) overall need to be there. Conrail does not require its members to pay any membership fee. About 100 Conrail employees were members of its EDR in June 1977.

According to Conrail the purpose of its dining room is to provide a communication center where Conrail employees can meet to exchange ideas, particularly since so many new executives were new to one another and to Conrail. About 40 to 50 people dine there every day. Conrail charges \$2.25 for soup and sandwich or \$3 for a full meal. No alcohol or tobacco is sold. Food for the Conrail dining room is prepared by a catering firm which employs a chef, a busboy, and two waitresses. Billings from the catering firm separate the charges for the cost of food, salaries, and management fee.

The fees charged pay for the cost of the food plus some overhead costs. Conrail pays all other expenses for the dining room operation. Financial information on Conrail's executive dining facility operation is an integral part of Conrail's accounting records. Unlike USRA, Conrail does not maintain separate financial records for its EDR.

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1/ Conrail is not a Government corporation but rather a private, for-profit corporation which receives some financial support from the Federal Government in the form of loans and investment funds.

PROCUREMENT ACTIVITIES

The Vice Chairman and the Ranking Minority Member, Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs, asked us whether USRA's award of two contracts would have conflicted with the Federal Procurement Regulations (FPR) had they been applicable to USRA procurements. USRA is a Government corporation generally subject to the District of Columbia Nonprofit Corporation Act, and its employees are not considered to be Federal employees. Most important, it is specifically designated as a "mixed-ownership" Government corporation. As such, it is not an "executive agency" and is not required to follow FPR.

USPA said that, because of the urgency imposed on it by statutory deadlines set forth in the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 (Supp. V, 1975)), it used expedited procurement procedures, relying on somewhat informal procedures, such as telephone solicitations, in competitive contracts to insure speedy contract placement. Both contracts in question were awarded in 1974 when these procedures were in effect. It is likely, therefore, that USRA would have obtained deviations from FPR requirements if, theoretically, they had been applicable to USRA contracts.

Whether there would have been full compliance with FPR had they been applicable is a hypothetical question which cannot be definitely answered. A determination of full FPR compliance would require detailed knowledge of procurement facts existing 3 years ago when the contracts were awarded. Because of a lack of full documentation of the facts, it is not possible to completely reconstruct them now. It is possible, however, to compare some FPR provisions to the procurement problems we noted.

The two contracts are discussed below.

Contract 1 (Questions 2 and 3)

Review a USRA contract awarded to a California-based management consulting firm and determine whether a conflict of interest existed in that this firm owned 25 percent of another firm that might benefit from the report it was hired to prepare. Did the

letting of this contract conflict in any way with the Federal procurement rules or USRA regulations or customs?

Determine whether the August 12 and 13, 1974, visit to San Francisco by a USRA employee to solicit a bid for the contract from the California management consulting firm represented an impropriety which is violative of FPR or USRA regulations or customs.

On September 23, 1974, USRA awarded a contract to a management consulting firm, headquartered in California, to study an improved method of railway equipment utilization, including the distribution of railroad cars. The contract was a labor-hour contract estimated originally at \$115,750. However, it was later modified and increased to \$164,400. The contract was finally closed out at \$161,698.

Our analysis of this contract disclosed that USRA did not provide to all the firms solicited the same opportunity to compete because USRA gave two firms advance notice of solicitation. This action by USRA, which is contrary to FPR, constitutes a departure from good procurement practices in general.

In our review of the contract file and discussions with USRA personnel, we learned of the following chronology of events surrounding the award of the contract to the California-based management consulting firm.

On July 23, 1974, eight firms were competitively solicited to bid on the contract. The only proposal received, dated July 31, 1974, was from a defense research firm which had done very little in the area of rail transportation.

On August 12 and 13, 1974, USRA's technical evaluator met with a management consulting firm and a second firm, notifying them unofficially that this project would be resolicited. In giving the advance notice, the technical evaluator clarified points and answered questions concerning the statement of work. The technical evaluator has admitted he should not have given the advance notice.



In a memo dated August 15, 1974, USRA's technical evaluator of contract proposals decided that the work statement was too comprehensive for the short performance time available and requested that the first solicitation be canceled. On August 21, 1974, USRA, by telephone, resolicited a less elaborate equipment utilization study from five firms under a revised work statement.

Three firms, including the defense research firm, were among the resolicited, although they had not received advance notice of the resolicitation. Two of these firms had been contacted under the original solicitation and were, therefore, familiar with the work statement. One firm, however, was not solicited under the original work statement, nor was it given advance notice of USRA's intent to resolicit. This firm became aware of the resolicitation on August 21, 1974, when USRA telephoned. Resolicited proposals were to be at USRA no later than August 26, 1974.

Two proposals were received in response to the resolicitation, one from the management consulting firm and one from the defense research firm. On August 29, 1974, both firms discussed their technical proposals with USRA representatives. A technical evaluation was conducted resulting in the selection of the consulting firm. According to USRA officials, they awarded the contract to the consulting firm because of its technical superiority. They believed the firm had considerable experience with other similar work and could expedite performance to meet USRA's deadline of February 1975. According to USRA, the defense research firm had a higher risk of failure or delay because it had never done such work. However, USRA was concerned that because the consulting firm was so familiar with the work, there was risk of bias.

Most important, USRA recognized that the management consulting firm was in a potential conflict of interest situation because it partially owned an operations control system. The system had been offered to other railroads, generally free of charge and on several occasions had been installed by the consulting firm.

Because of the potential conflict of interest, the contract contained a provision which prevented the management consulting firm from acting as a prime contractor or first-tier subcontractor on any system recommended in the

study. This restriction was effective 3 years after any follow-on contract, but USRA could waive it if it proved to be in USRA's best interest. USRA's President was advised of this matter and agreed that the consulting firm was best qualified to provide the services and that USRA's interest would not be served by eliminating consideration of the contractor's own operations control system.

The FPR does not prevent or otherwise regulate such a relationship, often referred to as an organizational conflict of interest. Consequently, even if FPR were applicable, it would not have prohibited USRA from awarding the contract to the consulting firm.

Concerning the visit to San Francisco by an USRA employee, section 1-3.802(c) of the FPR states that each request for proposal shall be released to all prospective offerors at the same time and that no offeror shall be given the advantage of advance knowledge that proposals are to be requested. There is no indication that USRA's advance notice to the consulting firm in any way deprived the other proposer, the research enterprise, of a fair opportunity to compete. However, the one firm, not originally solicited and resolicited without advance notice, informed USRA that it had to cancel its plan to compete because it could not prepare and submit the proposal within the period set by USRA. In our opinion, the advance notice to selected firms was a departure from good procurement practices because it provided some firms with a competitive advantage over others.

In a September 27, 1977, letter from USRA's Vice President for Administration, he stated that because the only response received to the original solicitation was from a firm not experienced in the field, it was therefore essential that USRA encourage additional firms to become interested in bidding. In attempting to interest additional firms in bidding, two firms were notified in advance about the proposed invitation. According to USRA, the end result of their action was increased competition.

As previously mentioned, however, the FPR specifically stated that each request for proposal shall be released to all prospective offerors at the same time. Using this as our basis, we maintain that the advance notice to some

firms provided them with an unfair competitive advantage over others and was contrary to FPR and good procurement practices.

In response to recommendations we made in our November 1975 report entitled "Improvements Needed in Procurement and Financial Disclosure Activities of the U.S. Railway Association" (CED-76-41), and weaknesses noted during our review of USRA's financial statements for fiscal year 1976, USRA issued a new order on procurement canceling its previous procedures for expedited procurements. The procedures discussed in the new order, issued in October 1976, strengthened the procurement process at USRA. For example, the new order required that the Board of Directors review and approve certain contracts and that more detailed information concerning the award of the contracts be maintained in the procurement files.

Contract 2 (Question 4)

Examine an USRA contract awarded to a talent-search firm and determine if it was properly awarded under Federal procurement or USRA regulations and whether these regulations allow either the Federal Government or its quasi-public corporations to pay a talent-search firm for all costs it incurs in looking for executives above the customary payment based on the percentage of salary for anyone hired. In addition, please determine whether documentation submitted to USRA justifying the firm's charges for \$129,000 was sufficient by Federal accounting standards.

We found that USRA's actions concerning the award and administration of the contract would not have violated the FPR if it had been applicable.

On April 16, 1974, USRA awarded a sole-source contract to an executive search firm to recruit personnel to fill eight high-level positions in USRA. The effective date of the contract was made retroactive to January 24, 1974, when the firm began its work. The contract was later modified to

include recruitment of USRA's General Counsel. The original contract called for the payment of

- consulting services at \$75 an hour with an initial total estimate of \$18,000;
- a recruitment fee or retainer 1/ for a minimum of 3 months of recruiting effort equal to 25 percent of the estimated first-year salaries, or an initial estimate of \$82,000; and
- out-of-pocket expenses for both recruiting and consulting services at an initial estimate of \$16,000.

Concerning the question of whether the contract was properly awarded, the key issue is USRA's justification for the award as sole source. Subsection 1-3.101(d) of the FPR states that negotiated procurements shall be on a competitive basis to the maximum practical extent. A sole-source procurement must therefore be justified as having advantages to the Government outweighing the benefits of competition which are lost when solicitation and negotiations are restricted to one firm.

USRA officials defined "sole source contract" as a contract awarded when only one firm is contacted because of its unique capability to provide a service which no other firm can. Concerning this contract, USRA records reveal that USRA desired a firm having the largest number of high caliber senior recruiters throughout all regions of the United States. The firm selected met this qualification, and USRA considered it a desirable contractor because it had experience in recruiting railroad company personnel. It had more recruiters throughout the United States than its closest competitor which, at the time of the contract award, was not working in the railroad industry. The firm was selected from among 28 companies which held membership in an association representing the executive recruiting industry.

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1/ The fee was due whether or not the positions were filled by the executive search firm during the 6-month performance period of the contract.

In making the final selection, USRA received informal price quotations from the second largest recruiting firm on the list of 28. A comparison of these prices with those of the firm which was ultimately selected demonstrated that the costs involved would be greater if the contract was awarded to the second firm. For example, the second firm charged a fee of \$700 to \$1,000 for an 8-hour day for consulting services compared to \$600 charged by the other firm for comparable services. Consequently, under USRA standards, the firm with the largest number of offices also had the best capability of the 28 firms reviewed and evidently offered a lower price than its closest rival. Therefore, other firms were not formally solicited and selection was on a sole-source basis.

A sole-source procurement seems to have been warranted for this contract. Under similar circumstances we have ruled that a sole-source procurement is justified (B-159250, June 27, 1966; B-164593, Aug. 27, 1968). For these reasons, even if FPR had been applicable, its provisions would evidently not have been violated by the sole-source procurement.

The FPR contains no provision which prohibits paying a contractor for out-of-pocket expenses in addition to a 25 percent recruitment fee. Such pricing was considered normal for all members of the recruiting industry association at the time the contract was awarded, even though a 30 percent fee with no expenses is now the common practice. Further, the Defense Contract Audit Agency audited these expenses on August 20, 1975, and found no major objections.

Subsection 1-3.807-2 of the FPR provides that some form of price or cost analysis be made in connection with every negotiated procurement action. USRA did analyze the informal price quotations of both firms and found that the firm selected had a more favorable price. We conclude, therefore, that there is no definite indication that if they were applicable, FPR provisions would have been violated by the pricing terms of the contract.

With respect to documentation submitted with billings from the executive search firm to support USRA payments of \$129,000, we found that billings were itemized by broad categories but did not provide detailed itemization. However, subsection 1-16.501(b) of the FPR does not have

strict standards for documenting entitlement to payments in the case of ordinary service contracts, and therefore, the documentation submitted was adequate and sufficient to support the billings received from the executive search firm.

SCOPE OF REVIEW

We made our review at the Washington, D.C., headquarters of USRA. We examined pertinent records, documents, and files and discussed matters covered in this report with USRA officials. We also visited the corporate headquarters offices of Conrail, located in Philadelphia, Pennsylvania.

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Alan L. Dean  
Vice President for Administration

September 27, 1977

Mr. Herbert R. McClure  
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Dear Mr. *McClure* McClure:

This will respond to the draft GAO report "U.S. Railway Association's Executive Dining Room and Certain Contracts."

With respect to the Executive Dining Room (EDR), the draft report does not provide sufficient information concerning USRA's unique need for such a facility. The Association is located at Buzzard Point, a site which has received considerable publicity because of its many undesirable characteristics for office personnel. The only nearby dining facility available for USRA staff at Buzzard Point is a privately-operated cafeteria in the Transport Building. The cafeteria now has its third operator and complaints about the food service have been constant over the past three years.

The Association has had and will continue to have unusual needs for meeting with representatives of state governments, other federal agencies, law firms, Congressional members and staff, railroads and the users of rail transportation. If the meetings are to be held at USRA's location, (which they should be for reasons of effective use of staff time), it is essential that an appropriate dining facility be available in the building so that the meetings can continue throughout the lunch period.

During USRA's planning period, the USRA staff worked thousands of hours of overtime and the EDR facility was used to feed staff who worked after the dinner hour and on weekends. In addition, the EDR has regularly served meals to the Board of Directors of the Association. The interchange of information among USRA senior staff members that takes place because they meet daily in the EDR has been an invaluable source of coordination. The management of the Association believes that the existence of the EDR made an important and substantial contribution to the accomplishment of the USRA planning mission, and that significant benefits to USRA's work have continued up to the present.

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The draft report states that "USRA provided financial support totaling about \$200,000" to the EDR over a three-year period. This figure includes support services which are normally funded by the Federal Government for cafeterias available to federal employees. The GSI cafeterias do not pay rent, and their original equipment is provided from appropriated funds. When these items are eliminated from the figures included in your report the additional financial support provided by USRA totals only \$120,000.

A number of federal agencies operate executive dining rooms. It is the common practice in these installations for the personnel to be paid from appropriated funds. This is true of the dining rooms used by senior officials in the Department of Transportation and the Department of Defense. When USRA established its dining facility, it used as its model the DOT Executive Dining Room. As a result, our prices were established to cover the cost of food and beverages consumed and it was understood that the salaries of the EDR staff would be paid from appropriated funds.

A brief comment on the portion of the report covering the Strong Wishart contract seems warranted. The draft states that our handling of this solicitation "was a departure from good procurement practices." This conclusion is based on the fact that a USRA staff member visited two contractors to explain to them that USRA was issuing a new invitation on the subject study. In GAO's opinion this constituted an advance notice which gave these two firms a competitive advantage. The facts of the case are these: USRA received only one response to its original solicitation and this response was not from a firm experienced in the field; it was therefore essential that USRA encourage additional firms to become interested in providing us with the study. In attempting to interest additional firms in bidding (obviously a desirable procurement goal) two firms were notified in advance about the proposed invitation. The end result of our action was to increase competition for the study and this fact should certainly be pointed out in your report.

We concur in your findings concerning the talent search contract and note that this contract was actually negotiated by DOT before USRA was operational.

We appreciate this opportunity to comment on the draft report.

Sincerely,



Alan L. Dean

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