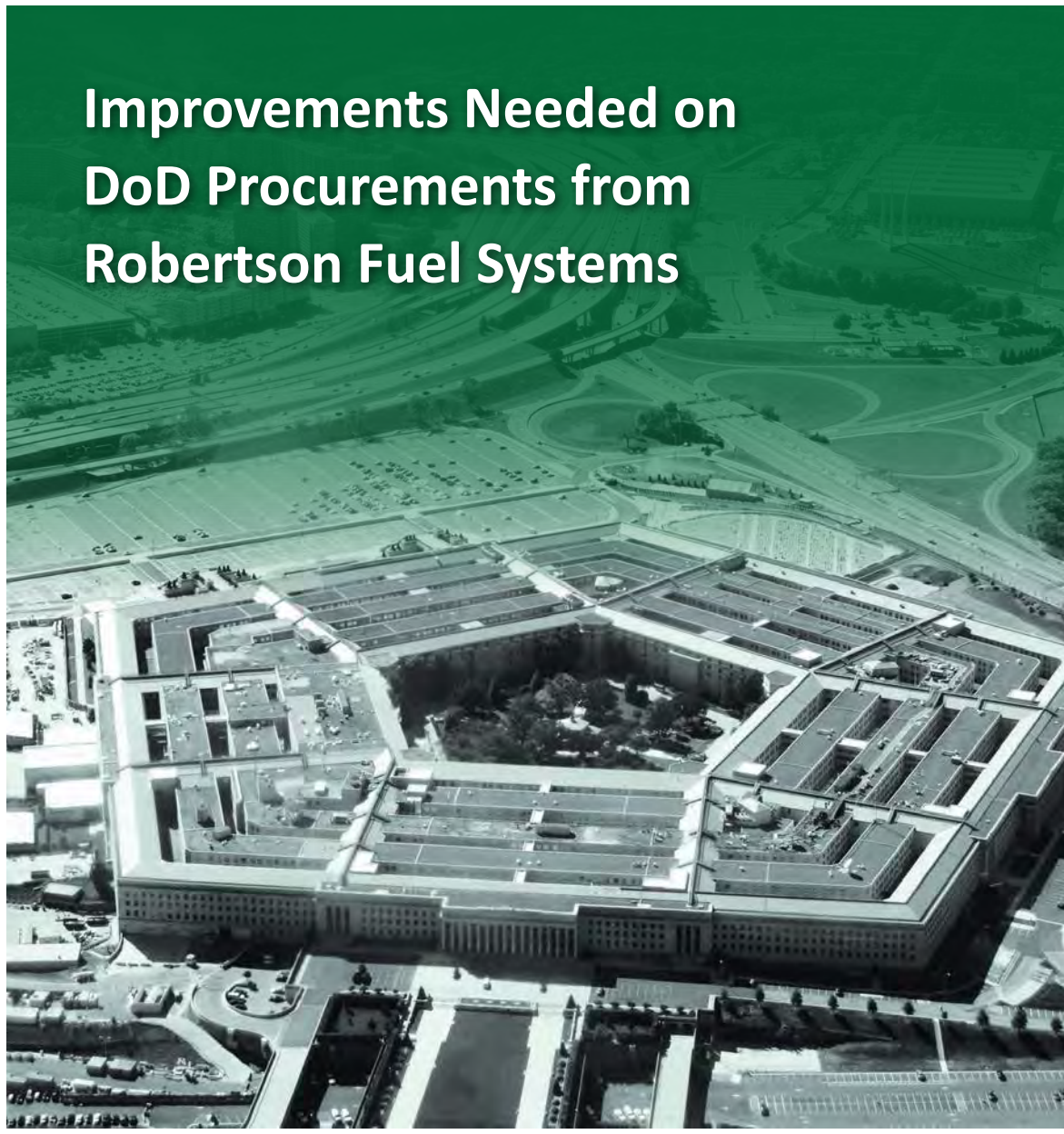


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INSPECTOR GENERAL

U.S. Department of Defense

JUNE 25, 2015



Improvements Needed on DoD Procurements from Robertson Fuel Systems

INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

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Mission

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Vision

Our vision is to be a model oversight organization in the Federal Government by leading change, speaking truth, and promoting excellence—a diverse organization, working together as one professional team, recognized as leaders in our field.



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Results in Brief

Improvements Needed on DoD Procurements from Robertson Fuel Systems

June 25, 2015

Objective

Our objective was to determine whether DoD effectively procured items from Robertson Fuel Systems (Robertson). Specifically, we reviewed the commercial item determination and impact a sole-source, commercial procurement strategy had on the fair and reasonable price determination.

Finding

DoD did not effectively procure fuel systems and parts from Robertson on the nine nonstatistically selected, sole-source contracts reviewed. Specifically, contracting officers could not support the commercial item or fair and reasonable price determinations because contracting officers did not:

- have clear guidance when they made commercial item determinations and identified a minor modification, specifically when no evidence of commercial sales existed for items purchased on six contracts;
- obtain certified cost or pricing data or a waiver for items determined noncommercial on three contracts;
- request, or Robertson refused to provide, other-than-certified cost or pricing data for eight contracts; and
- perform adequate price analysis on eight contracts.

As a result, contracting officers applied the commercial item definition to items procured on Robertson sole-source

Finding (cont'd)

contracts without evidence of commercial sales and without evidence that the item was of a type customarily used by the general public. This inhibited the contracting officers' ability to develop an effective bargaining position and gave the contractor significant control in contract negotiations. In addition, DoD did not obtain the necessary data to determine if the \$77 million it spent on these contracts was fair and reasonable.

The Director, Defense Pricing made efforts to improve this area. For one of the nine contracts we reviewed, the Director's involvement resulted in the Army using a Navy Price Fighters "should cost" analysis in their negotiations with Robertson. As a result of these negotiations, Robertson accepted an amount less than its original proposal.

Recommendations

We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics issue guidance to clarify the commercial item definition in a sole-source environment when no evidence of commercial sales existed and provide clarification on when a commercial item modification is minor.

We recommend that the Director, Defense Logistics Agency; Commanding General, U.S. Army Contracting Command; and Assistant Commander for Contracts, Naval Air Systems Command require the contracting officers to:

- obtain adequate documentation to support the commerciality of Robertson's products or deem the items noncommercial;
- obtain additional cost data or report Robertson's refusal to provide cost data in the contract files and to the head of the contracting activity; and
- initiate "should cost" analyses on all sole-source contracts when Robertson refuses to provide cost or pricing data.



Results in Brief

Improvements Needed on DoD Procurements from Robertson Fuel Systems

Management Comments and Our Response

We received comments from the Director, Defense Pricing; Director, Defense Logistics Agency Acquisition; Acting Executive Deputy to the Commanding General, U.S. Army Materiel Command; and Deputy Assistant Secretary of the Navy (Acquisition and Procurement). Comments addressed all specifics of the recommendations, and no further comments are required. Please see the Recommendations Table on the next page.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Under Secretary of Defense for Acquisition, Technology, and Logistics		1
Director, Defense Logistics Agency		2.a, 2.b, 2.c
Commanding General, U.S. Army Contracting Command		2.a, 2.b, 2.c
Assistant Commander for Contracts, Naval Air Systems Command		2.a, 2.b, 2.c



**INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
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June 25, 2015

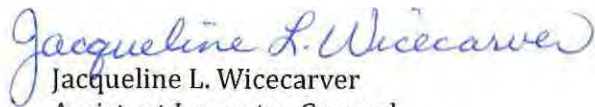
MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,
TECHNOLOGY, AND LOGISTICS
DIRECTOR, DEFENSE LOGISTICS AGENCY
NAVAL INSPECTOR GENERAL
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Improvements Needed on DoD Procurements from Robertson Fuel Systems
(Report No. DODIG-D2015-137)

We are providing this report for your information and use. DoD did not effectively procure fuel systems and parts from Robertson on nine sole-source contracts reviewed. We determined that DoD did not obtain the necessary data to determine if the \$77 million DoD spent on eight of nine Robertson Fuel Systems' contracts was fair and reasonable. We conducted this audit in accordance with generally accepted government auditing standards.

We considered management comments on a draft of this report when preparing the final report. Comments from the Director, Defense Pricing, responding for the Under Secretary of Defense for Acquisition, Technology, and Logistics; Director, Defense Logistics Agency Acquisition, responding for the Director, Defense Logistics Agency; Acting Executive Deputy to the Commanding General, U.S. Army Materiel Command, responding for the Commanding General, U.S. Army Contracting Command; and Deputy Assistant Secretary of the Navy (Acquisition and Procurement), responding for the Assistant Commander for Contracts, Naval Air Systems Command, addressed all specifics of the recommendations and conformed to the requirements of DoD Instruction 7650.03; therefore, we do not require additional comments.

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9077.


Jacqueline L. Wicecarver
Assistant Inspector General
Acquisition, Parts, and Inventory

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Introduction

Objective

Our objective was to determine whether the Department of Defense effectively procured items from Robertson Fuel Systems (Robertson). Specifically, we reviewed the support for the commercial item determination and impact a sole-source, commercial procurement strategy had on the fair and reasonable price determination. See Appendix A for a discussion of the scope and methodology and prior audit coverage related to the objective.

Background

DoD buys fuel systems and parts from Robertson on a sole-source basis. A sole-source contract is awarded when there is only one source that can satisfy the contract requirement. According to contracting officials, Robertson was the only contractor that had the design capability, engineering skills, and manufacturing knowledge to produce these fuel systems and parts.

According to Robertson, its products meet the definition of commercial items. Commercial items include any item of a type¹ customarily used by the general public for commercial purposes, which has been sold or offered for sale to the general public. The definition also includes items with minor modifications of a type not customarily available in the commercial marketplace.

The acquisition of sole-source commercial items presents pricing challenges for DoD. Contracting officers should not require certified cost or pricing data² when an item is commercial. Contracting officers must request other-than-certified cost or pricing data³ if there is not enough information available to establish price reasonableness based on the commercial market.

Robertson Fuel Systems

(~~FOUO~~) Robertson, headquartered in Tempe, Arizona, designs, manufactures, and fields crashworthy, ballistically self-sealing⁴ primary and auxiliary fuel systems for aircraft and ground combat vehicles. Robertson first developed crashworthy fuel systems for the U.S. Army UH-1 helicopter in 1970, and the other services followed

¹ Commercial of a type includes items that are similar to those in the commercial marketplace, but not identical.

² Federal Acquisition Regulation (FAR) subpart 15.403-1 requires certified cost or pricing data in certain procurements. The certification of data means that, to the best of the person's knowledge and belief, the cost or pricing data are accurate, complete, and current as of a date prior to contract award.

³ Other-than-certified cost or pricing data are related to prices, such as established catalog prices, market prices, or previous contract prices, or cost data necessary to determine a fair and reasonable price, but is not certified.

⁴ A ballistically self-sealing tank is designed to prevent fuel loss and a fire after damage.

(~~FOUO~~) soon after. Robertson consistently claims it develops these products at its own expense and sells them exclusively at catalog prices. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Robertson products support various military platforms, such as the:

- AH-64 Apache helicopter;
- UH-60 Black Hawk helicopter;
- V-22 Osprey aircraft; and
- Bradley fighting vehicle.

According to the Director, Defense Pricing, Robertson's sales are primarily to the Government, and DoD is essentially the exclusive Federal buyer. According to Federal Procurement Data System–Next Generation (FPDS-NG) data, the U.S. Army Contracting Command (ACC)–Redstone, Naval Air Systems Command (NAVAIR), and Defense Logistics Agency (DLA) Aviation–Huntsville purchased \$781.6 million of these products from 2001 through 2014.

U.S. Army Contracting Command

ACC provides contracting support to the life-cycle management commands in the Army Materiel Command, several program executive offices, and program managers for major acquisition programs. According to FPDS-NG, from January 2001 through November 2014, ACC-Redstone awarded 63 contracts to Robertson that cost \$615.3 million. Some of these contracts procured fuel systems, kits, and parts for helicopters such as the AH-64 Apache and UH-60 Black Hawk.

Naval Air Systems Command

NAVAIR supports the life cycle⁵ of naval aviation aircraft. This includes supporting Naval Aviation Program Executive Officers and their assigned program managers who are required to meet program cost, schedule, and performance requirements. According to FPDS-NG, from January 2001 through November 2014, NAVAIR awarded four contracts to Robertson that cost \$155 million. Some of these contracts procured items to include fuel systems and kits for the V-22 Osprey.

⁵ Life cycle is the period of time from initial item acquisition through its disposal.

Defense Logistics Agency

DLA provides logistics, acquisition, and technical services to:

- Army;
- Marine Corps;
- Navy;
- Air Force;
- other Federal agencies; and
- combined and allied forces.

DLA⁶ procures nearly 100 percent of the consumable items that the U.S. military needs to operate from food, fuel, and energy to construction and barrier equipment. DLA also supplies more than 85 percent of spare parts to the military. DLA Aviation manages depot-level repairable procurement operations at Redstone Army Arsenal, Alabama. According to FPDS-NG, from January 2001 through November 2014, DLA Aviation-Redstone awarded seven contracts to Robertson, which cost \$11.3 million, for fuel system kits and parts for the Army.

Review of Internal Controls

DoD Instruction 5010.40, “Managers’ Internal Control Program Procedures,” May 30, 2013, requires DoD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. We identified internal control weaknesses for purchasing sole-source commercial fuel systems, kits, and parts from Robertson. Specifically, contracting officers at ACC-Redstone, NAVAIR, and DLA Aviation-Huntsville did not have clear guidance when they made commercial item determinations and did not obtain sufficient information when they determined whether the prices were fair and reasonable. We will provide a copy of the report to the senior officials responsible for internal controls in the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics (OUSD AT&L), Department of the Army, Department of the Navy, and DLA.

⁶ www.dla.mil

Finding

Commercial Item and Price Determinations on Robertson Fuel Systems Contracts Not Supported

DoD did not effectively procure fuel systems and parts from Robertson on the nine nonstatistically selected, sole-source contracts that we reviewed. Specifically, contracting officers could not support the commercial item or fair and reasonable price determinations. This occurred because contracting officers did not:

- have clear guidance when they made commercial item determinations and identified a minor modification, specifically when no evidence of commercial sales existed for the items purchased on six of the nine⁷ contracts;
- obtain certified cost or pricing data or a waiver for those items that were determined noncommercial on three of the nine contracts;
- request or Robertson refused to provide other-than-certified cost or pricing data to support fair and reasonable price determinations for eight of the nine contracts; and
- perform adequate price analysis and relied on catalog prices or prior price history without validating those prices on eight of the nine contracts.

As a result, contracting officers did not develop an effective bargaining position and gave the contractor significant control in contract negotiations by generously applying the commercial item definition on a sole-source contract when no evidence of commercial sales existed and without evidence of a minor modification. Furthermore, DoD did not obtain the necessary data to determine if the \$77 million spent on these contracts was fair and reasonable. It is critical that DoD determine items noncommercial when there are no commercial sales and the items are not customarily used by the general public, identify the potential for alternative sources of supply, and use other price determination methods, such as a “should cost” analysis,⁸ to assist management in preventing future problems in similar sole-source situations.

⁷ Each of the nine contracts may have multiple problems associated with it and, therefore, the numbers of contracts will not add to nine.

⁸ A “should cost” analysis is a method used to determine the actual cost of a system by breaking down its parts and processes in an attempt to verify its price.

(FOUO) The Director, Defense Pricing and ACC-Redstone contracting officials made improvements in this area. For one of the nine contracts reviewed, the Director's involvement resulted in ACC-Redstone using a Navy Price Fighters "should cost" analysis in their negotiations with Robertson. As a result of these negotiations, Robertson agreed to accept \$ [REDACTED] less ([REDACTED] percent) than its original proposal.

Sole-Source Commercial Contracts Not Effective

DoD did not effectively procure fuel systems and parts from Robertson on the nine sole-source contracts reviewed. Specifically, contracting officers could not support the commercial item determinations for six of the nine contracts or the fair and reasonable price determinations for eight of the nine contracts.

Commercial Item Determinations Not Supported

Contracting officers could not support the commercial item determination for six of the nine contracts. Contracting officers determined that the fuel systems or parts procured were commercial or commercial of a type⁹ with minor modifications. Contracting officers determined that the three remaining contracts were noncommercial. Table 1 summarizes the different commercial item determinations contracting officers made for Robertson products.

Table 1. Commercial Item Determinations for Nine Contracts Reviewed

Contract	Activity	Commercial	Commercial of a Type/Minor Modification	Noncommercial
W58RGZ-13-C-0056	ACC-Redstone		X	
W58RGZ-11-D-0341	ACC-Redstone	X		
W58RGZ-10-D-0261	ACC-Redstone	X		
W58RGZ-10-D-0029	ACC-Redstone		X	
SPRA1-14-D-0027	DLA Aviation		X	
SPRA1-12-D-0065	DLA Aviation			X
SPRA1-11-D-0007	DLA Aviation			X
SPRA1-11-D-0016	DLA Aviation			X
N00019-12-C-0097	NAVAIR		X	

⁹ Commercial of a type is when an item is determined to be commercial because it is similar, or of a type, to one that is customarily used by the general public.

The six commercial or commercial of a type determinations did not consider whether Robertson had any commercial sales or verify the private company that purchased the items from Robertson did not re-sell the items to DoD. According to DoD guidance,¹⁰ the decision to whether the Government's requirements for an acquisition can be met by a commercial item should be based on an analysis of the market. For the six contracts, contracting officials used the existence of Robertson's catalog price list and claims of commerciality to determine the items were commercial. Contracting officials stated that Robertson was the only company that could provide these items. There was no evidence of a commercial market for the Robertson fuel systems or parts.

In addition, contracting officers used commercial of a type and minor modifications to justify their determination without adequately documenting that the modifications were minor for four of the six commercial contracts. The FAR¹¹ defines minor modifications as those that do not significantly change the commercial function or essential physical characteristics of an item or component, or change the purpose of the item. The Defense FAR Supplement (DFARS) Procedures, Guidance and Information¹² states contracting officials must exercise care and document commercial determinations that involve modifications of items not customarily available in the commercial market and items offered for sale but not actually sold. Contracting officers should ensure contract files fully and adequately document the market research and rationale supporting a conclusion. Contracting officials stated that the fuel systems or parts contained minor modifications; however, they did not document or perform a technical review to compare the characteristics of the commercial versus military items when making this determination.

Price Reasonableness Determinations Not Supported

Contracting officers could not support the fair and reasonable price determinations for eight of the nine contracts.¹³ Contracting officers relied on data from previous contract prices and Robertson's catalog prices to determine prices were fair and reasonable on eight contracts. DoD guidance¹⁴ states that when items lack sufficient commercial market histories and the contract is sole source, additional diligence must be given to determine prices are fair and reasonable. The FAR¹⁵ states that at a minimum, the contracting officer must use price analysis

¹⁰ OUSD AT&L, "Commercial Item Handbook," Version 1.0, November 2001.

¹¹ FAR Part 2.101, "Definitions," March 2, 2015.

¹² DFARS Procedures, Guidance and Information 212.102, "Acquisition of Commercial Items."

¹³ The one contract that could support a fair and reasonable price was ACC-Redstone contract W58RGZ-13-C-0056.

¹⁴ OUSD memorandum, "Commercial Item Determinations," March 2, 2007.

¹⁵ FAR Subpart 15.403-3, "Requiring Data Other Than Certified Cost or Pricing Data," December 26, 2014.

to determine whether the price is fair and reasonable whenever acquiring a commercial item. Cost data should be obtained to determine a fair and reasonable price if commercial sales data are not provided or are insufficient. Contracting officers did not obtain any cost data for six contracts and received limited cost data for two other contracts when price analysis techniques were insufficient to determine price reasonableness.

Reasons the Determinations Were Not Supported

Contracting officers did not have clear guidance when they made commercial item determinations and did not obtain sufficient information when they determined whether the prices were fair and reasonable. Table 2 summarizes the determination problems with each of the nine contracts we reviewed.

Table 2. Commercial Item and Fair and Reasonable Price Determination Problems for Nine Contracts Reviewed

Contract	Activity	Unclear Guidance	Certified Cost or Pricing Data Not Obtained	Lack of Cost or Pricing Data	Unsupported Price Analysis
W58RGZ-13-C-0056	ACC-Redstone	X			
W58RGZ-11-D-0341	ACC-Redstone	X		X	X
W58RGZ-10-D-0261	ACC-Redstone	X		X	X
W58RGZ-10-D-0029	ACC-Redstone	X		X	X
SPRRA1-14-D-0027	DLA Aviation	X		X	X
SPRRA1-12-D-0065	DLA Aviation		X	X	X
SPRRA1-11-D-0007	DLA Aviation		X	X	X
SPRRA1-11-D-0016	DLA Aviation		X	X	X
N00019-12-C-0097	NAVAIR	X		X	X

Unclear Commercial Item Definition Guidance

Contracting officers did not have clear guidance to make commercial item determinations and to identify a minor modification, specifically when no evidence of commercial sales existed for the items purchased on six of the nine sole-source contracts. Items can be considered commercial of a type if they are customarily used by the general public for purposes other than government purposes; if they are modifications of a type customarily available in the commercial marketplace;

or if they are minor modifications of a type not commercially available in the commercial marketplace made to meet Federal Government requirements. The Commercial Item Handbook states that commercial of a type items do not have to be identical to those in the commercial market. The broad commercial item definition allows contracting officers to define items as commercial even when those items have not been sold to the public. As a result, contractors may claim their items are commercial of a type when commercial sales do not exist.

(FOUO) The Director, Defense Pricing, along with several contracting officers, agreed that commercial of a type determinations were difficult. The guidance created situations where one contracting officer could determine if an item was commercial of a type and another contracting officer could reach

(FOUO)
There was no evidence of any commercial sales for this fuel system.

the opposite determination for the same item. For example, a Defense Contract Management Agency (DCMA) Cost and Pricing Center analyst and two program management officials [REDACTED] [REDACTED]¹⁶ The DCMA analyst stated, “[REDACTED]

[REDACTED]” In addition, there was no evidence of any commercial sales for this fuel system. For the same contract, ACC-Redstone contracting officials and two other program management officials disagreed that the item was noncommercial and determined that the Apache fuel system was commercial of a type. These contracting officials determined the fuel system was similar to other commercial fuel tanks and only contained minor modifications. However, the contracting officials could not provide documentation to support the determination although it conflicted with an earlier determination that no commercial items would satisfy the requirement.

In addition, the FAR commercial item definition¹⁷ allows for minor modifications of items to meet Federal Government requirements not customarily available in the commercial marketplace. Minor modifications should not alter the commercial function or physical characteristics of the commercial item. Contracting officers should also consider the value and size of modifications when they determine whether a modification is minor. However, the FAR does not quantify or provide specific criteria as to what constitutes a minor modification or how much the functionality of an item can be altered in order to remain commercial of a type. This can result in increased claims that modifications are minor.

¹⁶ The DCMA and program management officials determined the fuel system was noncommercial on sole-source contract number W58RGZ-14-D-0116.

¹⁷ FAR Subpart 2.101, “Definitions,” March 2, 2015.

(FOUO) For example, the contracting officer determined that the V-22 fuel system was [REDACTED]

[REDACTED]

[REDACTED]¹⁹ In addition, the V-22 fuel system had to meet higher military standards for crashworthiness and self seal against ballistic (projectile) threats. Although these modifications appear to be significant, the contracting officer used the broad commercial item definition to determine [REDACTED]

[REDACTED]

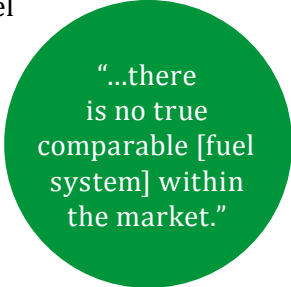
(FOUO) Furthermore, the contracting officer determined the fuel system was [REDACTED]

[REDACTED] and a later Navy Price Fighters' report

identified, "there is no true comparable [fuel system] within the market." The Navy Price Fighters performs various cost,

price, and engineering analyses for DoD customers. It also assists contracting officers, when requested, to negotiate lower

prices. Contracting officers should obtain the necessary documentation to support the commerciality of any product from Robertson, as defined by the FAR. In addition, the OUSD AT&L should issue guidance to clarify when a modification to a commercial item is minor.



The Army recognized that guidance was unclear and issued policy that clarified commercial item determinations when there were no commercial sales. In October 2014, the Army revised its guidance²⁰ to require contractors to identify the percentage of items sold in the commercial marketplace versus the percentage of items sold to government agencies. The contracting officer should include this data to further support the commercial item determination.

According to the guidance, if the Government is the end user in the marketplace, then a positive commercial item determination is generally not appropriate. While this recent guidance provides clarification on determining commerciality, it was not in effect at the time the Robertson contracts were awarded and only applied to Army contracting officials. The OUSD AT&L should issue similar guidance DoD-wide to clarify the commercial item definition in a sole-source environment when no evidence of commercial sales exists.

¹⁸ The contracting officer made the determination on sole-source contract number N00019-12-C-0097.

¹⁹ The Determination of Commerciality for the current contract relied on the commercial item determination for the previous contract, which contained comparisons to commercial fuel systems.

²⁰ Army FAR Supplement Part 5112, "Acquisition of Commercial Items," October 7, 2014.

Certified Cost or Pricing Data Not Obtained

Contracting officers did not obtain certified cost or pricing data for items determined to be noncommercial on three of the nine contracts. The FAR²¹ requires the contracting officer to obtain certified cost or pricing data if none of the following exceptions applies:

- adequate price competition;
- prices set by law or regulation;
- acquisition of a commercial item; or
- the head of the contracting activity grants a waiver.

None of these exceptions applied to the three DLA contracts.

The contracting officers supported their noncommercial item determination based on no commercial items available to meet the Government's needs and because

all sales were to the Government. For example, a contracting officer acquired a fuel tank with an attached ammunition compartment and determined there were no commercial items available that would meet DoD standards without significant modifications.²² The fuel tank was only sold to DoD and required additional inspection and testing. Since the contracting officer determined the fuel tank was noncommercial, certified cost or pricing data was required.

However, the contracting officers included this statement in all three DLA contracts: "parts acquired are considered commercial for purposes of pricing . . . and certified cost or pricing data was not required." As a result of including this clause, the contracting officers did not obtain certified cost or pricing data for any of the contracts that had an estimated contract ceiling of \$109.4 million and were prohibited by the FAR from obtaining the information.

The contracting officers' actions did not comply with the requirement to obtain certified cost or pricing data or a waiver. If adequate support is not obtained to support a commercial item determination, the contracting officer should determine the item is noncommercial and obtain certified cost or pricing data or a waiver in accordance with the FAR. However, if a waiver is requested, the contracting officer should have enough data to determine the price is fair and reasonable before any waiver is granted.

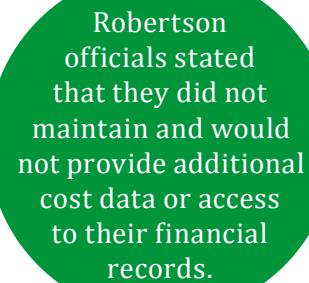
²¹ FAR Subpart 15.403-1, "Prohibition on Obtaining Certified Cost or Pricing Data," and Subpart 15.403-4, "Requiring Certified Cost or Pricing Data," December 26, 2014.

²² The fuel tank was acquired on sole-source contract number SPRA1-11-D-0016.

Lack of Cost or Pricing Data

Contracting officers did not request, or Robertson refused to provide, other-than-certified cost or pricing data to support fair and reasonable price determinations for eight of the nine contracts. The FAR²³ requires contracting officers to request the contractor provide other-than-certified cost or pricing data if there is not enough information available from the commercial market to establish price reasonableness. If the contractor does not comply with the request, the FAR does not allow contracting officers to award the contract without the head of the contracting activity's approval.

Contracting officials did not ask for additional cost data on the contracts because Robertson officials stated that they did not maintain and would not provide additional cost data or access to their financial records. Army, Navy, and DLA officials asked for additional commercial sales to support the price for the fuel systems and parts because of the limited information provided by Robertson. After Robertson refused to provide additional cost data to support price reasonableness, ACC contracting officials elevated one contract to the Director, Defense Pricing.²⁴



Robertson officials stated that they did not maintain and would not provide additional cost data or access to their financial records.

In September 2013, the Director, Defense Pricing met with Robertson officials and convinced them to provide additional data to support a price reasonableness determination. The Director, Defense Pricing requested the Navy Price Fighters to assist the contracting officer and work with Robertson to obtain additional data to support the price reasonableness determination. Contracting officers should obtain additional cost data to support a price reasonableness determination or report when Robertson refuses to provide requested information to the head of the contracting activity. In addition, contracting officers should report the refusal in a system such as the Contractor Performance Assessment Reporting System,²⁵ so it is available for use by all DoD contracting officials.

Price Analysis Not Supported

Contracting officers did not perform adequate price analysis and relied on catalog prices or prior price history without validating those prices on eight of the nine contracts. The FAR²⁶ requires the contracting officer to, at a minimum,

²³ FAR 15.403-3 "Requiring Data Other Than Certified Cost or Pricing Data," December 26, 2014.

²⁴ The contract elevated to the Director, Defense Pricing, was contract number W58RGZ-14-D-0116.

²⁵ The Contractor Performance Assessment Reporting System is a web-enabled application used by DoD to collect information on a contractor's performance to provide a record, both positive and negative, on a given contractor.

²⁶ FAR Subpart 15.403-3, "Requiring Data Other Than Certified Cost or Pricing Data," December 26, 2014.

use price analysis to determine whether the price is fair and reasonable. Price analysis includes such things as adequate price competition, use of historical prices paid that have similar terms and conditions, independent government cost estimates, and catalog price lists. A commercial sole-source contract can present pricing challenges when there is a lack of commercial sales and may require cost analysis. The primary benefit of established market prices is eliminated when there are no sales to the general public.

Accepted...
the contractor's
catalog price lists
without further
analysis.

Contracting officers accepted prices based solely on the contractor's catalog price lists without further analysis and without having evidence of commercial sales for four of the eight contracts. The FAR²⁷ states that the fact that a price is included in a catalog does not, in and of itself, make it fair and reasonable. Contracting officers did not obtain additional cost or pricing data and did not challenge Robertson's catalog prices. For example, ACC-Redstone contracting officers accepted a 20-percent discount off of the contractor's catalog price with no additional documentation such as invoices or price lists to support their claim. Acceptance of a discount off the contractor's catalog price, even 20 percent, does not make the price reasonable.

In addition, contracting officers did not verify and document that prior prices used in the price analysis were fair and reasonable for five²⁸ of the eight contracts. The FAR²⁹ allows contracting officers to use prior price history and specifies procedures to be used when making this comparison. Prior prices can be used if it is for the same or similar items and the reasonableness of the previous price can be established.

The contracting officials acknowledged that they did not perform an analysis to identify how historical prices were determined fair and reasonable. For example, DLA contracting officers awarded a contract for CH-47 Chinook electrical fuel pumps and relied solely on previous Army prices to determine the price was fair and reasonable.³⁰

The Director, Defense Pricing recognized that price analysis on prior Robertson contracts was inadequate. The Director, Defense Pricing requested the Navy Price Fighters use cost data provided by Robertson to prepare a "should cost" analysis on four fuel systems. Instead of relying solely on a catalog or prior prices paid,

²⁷ FAR Subpart 15.403-3, "Requiring Data Other Than Certified Cost or Pricing Data," December 26, 2014.

²⁸ One contract relied on both catalog prices and prior prices.

²⁹ FAR Subpart 15.404-1, "Proposal Analysis Techniques," December 26, 2014.

³⁰ The DLA contract is contract number SPRAA1-12-D-0065.

the contracting officer used the “should cost” analysis, program management office input, lower escalation rates, and profit analysis to arrive at the DoD price. The contracting officer’s negotiations with the contractor resulted in a lower price to the DoD. Contracting officers should request a “should cost” analysis on all sole-source contract actions with Robertson when it refuses to provide cost or pricing data to support a fair and reasonable price determination.

Recent DoD Improvements on Sole-Source Commercial Procurements

The Director, Defense Pricing was not involved with the award of Robertson contracts prior to 2013. Eight of the nine contracts we reviewed were awarded before that time. The Director became involved with the award of the remaining contract at the request of the Executive Director, ACC-Redstone.

In July 2013, the Director, Defense Pricing assisted with negotiating a sole-source procurement from Robertson for the AH-64 Apache helicopter fuel systems. ACC-Redstone officials could not determine whether the fuel systems were commercial items or whether the price was fair and reasonable because Robertson refused to provide cost or pricing data. The Director, Defense Pricing requested documentation from the Services and identified that Robertson also refused to provide information to the Navy and DLA.



In response, the Director, Defense Pricing met with Robertson officials twice to obtain information on the company’s business practices and how DoD could determine the prices to be fair and reasonable given the sole-source environment. During the initial visit, the Director, Defense Pricing told Robertson officials that they needed to provide additional cost information on their products. Based on this request, Robertson agreed to allow a third-party consultant hired by DoD to review its cost data and assist it with presenting the data to DoD in a useful manner.

(FOUO) The Director, Defense Pricing tasked the Navy Price Fighters to develop “should cost” analyses for each of the Robertson fuel systems sold to DoD. Between March 2014 and November 2014, the Navy Price Fighters used available information that included the third-party consultant’s report to prepare “should cost” analysis reports for four fuel systems. ACC-Redstone contracting officials used the Navy Price Fighters analysis to support the Army negotiations with Robertson.³¹ As a result of these negotiations, Robertson agreed to accept \$ [REDACTED] less ([REDACTED] percent) than its original proposal.

³¹ ACC-Redstone contract was contract number W58RGZ-13-C-0056.

In addition, the Director, Defense Pricing recently issued guidance³² on February 4, 2015, to contracting officers on pricing commercial items. This guidance repeats the FAR and states that if market based pricing is not available, the contracting office may use cost-based analysis to determine price reasonableness; however, it is not required.

Furthermore, in response to Section 831 of the FY 2013 National Defense Authorization Act, the Director, Defense Pricing, required DCMA to establish a group of experts that will analyze data and make recommendations to the contracting officer on commerciality and pricing. The contracting officers can request this DCMA team perform research on a company and product, issue a technical report to recommend a commercial item determination, and identify any other available information to support price reasonableness.

Conclusion

DoD recognized the need for more thorough reviews when it determined fair and reasonable prices on sole-source commercial contracts. We commend the efforts by the Director, Defense Pricing to obtain additional data that support fair and reasonable price determinations for the most recent Robertson contract. It is also important that DoD undertake additional efforts to clarify guidance when it makes commercial item determinations. Contracting officers determined the items were commercial by applying the existing commercial item definition to items procured on Robertson sole-source contracts without evidence that they were of a type customarily used by the general public and had commercial sales. This inhibited the contracting officers' ability to develop an effective bargaining position and gave the contractor significant control in contract negotiations. As a result, DoD did not obtain the necessary data to determine if the \$77 million DoD spent on these contracts was fair and reasonable. It is critical that DoD determine items noncommercial when the items are not customarily used by the general public and there are no commercial sales, identify the potential for alternative sources, and use other pricing methods, such as the "should cost" analysis, to assist management in developing strategies for dealing with similar problems in other sole-source situations.

³² OUSD AT&L Memorandum, "Commercial Items and the Determination of Reasonableness of Price for Commercial Items," February 4, 2015.

Management Comments on the Finding and Our Response

Department of the Navy Comments

The Deputy Assistant Secretary of the Navy (Acquisition and Procurement), partially concurred with the finding that other-than-certified cost or pricing data were not provided to support a fair and reasonable price determination for the NAVAIR contract.³³ NAVAIR acknowledged that although Robertson did not provide sales history for the exact fuel systems used on the V-22, Robertson provided commercial sales history for what NAVAIR considered comparable systems. Robertson manufactured these systems and sold them to other customers. NAVAIR stated that these fuel systems have a similar installation time and were comparable in function and design. The contracting officer used this comparable system data to analyze the price.

In addition, the Deputy Assistant Secretary partially concurred with the finding that the price analysis relied on catalog prices or prior price history without validation of those prices. NAVAIR stated that the contracting officer partially relied on the catalog prices and prior price history; however, prices were further validated by searching for individual component costs that were included within a fuel system package from the Federal Logistics Information System database. Further, NAVAIR stated that the NAVAIR Cost Analysis Department evaluated the escalation rates used in the catalog pricing.

Our Response

We agree that Robertson provided the Navy sales data for other fuel systems. However, the fuel system provided for comparison purposes was for a significantly smaller and less expensive fuel system that did not meet military standards for crashworthiness and self-seal against ballistic (projectile) threats. In addition, the Navy Price Fighters' report identified, "there is no true comparable [fuel system] within the market." It is not suitable to use sales history for an incomparable fuel system to determine fair and reasonable pricing and could ultimately lead to an increased risk that DoD will pay higher prices.

³³ NAVAIR contract was contract number N00019-12-C-0097.

(~~FOUO~~) In addition, the NAVAIR contracting official used the Federal Logistics Information System database to compare the V-22 fuel and accessory kits to other Robertson fuel kits. As discussed in the paragraph above, the Navy Price Fighters' report stated there was no true comparable fuel system within the market. [REDACTED]

[REDACTED] It is not sufficient for the Navy to compare V-22 kits to other Robertson kits because according to the Navy Price Fighters and Robertson, the items are not comparable.

(~~FOUO~~) Robertson sold its products to DoD for many years without providing meaningful cost data as a basis to validate the reasonableness of prices charged. [REDACTED]

[REDACTED] For these reasons, comparing the V-22 kits to incomparable Robertson products is not an accurate method to determine fair and reasonable prices.

Recommendations, Management Comments, and Our Response

Recommendation 1

We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics issue guidance to clarify the commercial item definition in a sole-source environment when no evidence of commercial sales exists for an item being purchased and provide additional clarification as to when a modification to a commercial item is minor.

Under Secretary of Defense for Acquisition, Technology, and Logistics Comments

The Director, Defense Pricing, responding for the Under Secretary of Defense for Acquisition, Technology, and Logistics, agreed with the recommendation. The Director stated that DoD developed a proposed DFARS rule that will clarify the commercial item definition in a sole-source environment when no evidence of commercial sales exists for an item being purchased. In addition, the proposed rule would provide additional clarification for when a modification to a commercial item is minor.

The Director also plans to issue a draft revision of the Commercial Item Handbook for public comment, which contracting officers can use to help make their determinations. The Director stated that he is working with the Director, DCMA to establish multiple commercial pricing centers of excellence to assist contracting officers with their decisions and he is creating a module in the Contract Business Analysis Report database to archive documentation regarding commercial item determinations.

Our Response

Comments from the Director addressed all specifics of the recommendation, and no further comments are required.

Recommendation 2

We recommend that the Director, Defense Logistics Agency; Commanding General, U.S. Army Contracting Command; and Assistant Commander for Contracts, Naval Air Systems Command require contracting officers to:

- a. Obtain the necessary documentation to support the commerciality of any product from Robertson, as defined by Federal Acquisition Regulation Subpart 2.101. If adequate support is not obtained, deem the item noncommercial and obtain certified cost or pricing data in accordance with Federal Acquisition Regulation Part 15 or obtain a waiver where appropriate.**
- b. Obtain additional cost data to support price reasonableness determinations or document when Robertson refuses to provide requested information in the contract files and elevate the denial to the head of the contracting activity. In addition, contracting officials should report the refusal in a system such as the Contractor Performance Assessment Reporting System, so it is available for use by all DoD contracting officials.**
- c. Request “should cost” analysis to support a fair and reasonable price determination on all sole-source contract actions with Robertson when the contractor refuses to provide cost or pricing data.**

Defense Logistics Agency Comments

The Director, DLA Acquisition, responding for the Director, DLA, agreed, stating a memorandum would be sent to the DLA Aviation Head of Contracting requiring the implementation of procedures to comply with the recommendations. DLA will issue the memorandum no later than 10 days after this final report is issued.

Department of the Army Comments

The Acting Executive Deputy to the Commanding General, U.S. Army Materiel Command, responding for the Commanding General, agreed, stating ACC will initiate action and direct ACC Redstone to immediately advise their contracting officers to take action on these recommendations. In addition, Headquarters, ACC Policy Division will issue a contracting note to the ACC contracting workforce to reiterate the recommendation requirements no later than September 30, 2015. This contracting note is in addition to a previous action taken in January 2015 that required all ACC contracting personnel to take mandatory training on commercial item determinations during FY 2015.

Department of the Navy Comments

The Deputy Assistant Secretary of the Navy (Acquisition and Procurement), responding for the Assistant Commander for Contracts, NAVAIR, agreed, stating NAVAIR plans to re-engage with Robertson on the commerciality of the V-22 fuel systems and kits before any follow-on contracts are issued. This action will be taken by March 31, 2016. In addition, the Request for Proposal for follow-on contracts will include a request for the required cost data or other-than-cost and pricing data depending on the commercial item determination. The current contract will use other-than-cost and pricing data requested by the Director, Defense Pricing, to ensure that current and future contract prices are fair and reasonable.

NAVAIR also plans to address Robertson's initial refusal to provide data along with their eventual compliance in the Contractor Performance Assessment Reporting System by October 31, 2015. Finally, the Navy Price Fighters "should cost" analysis is being used to either confirm or renegotiate the final option price on contract N00019-12-C-0097 and seek a downward price adjustment of previously exercised contract line items, if applicable. This action will occur by June 30, 2015.

Our Response

Comments from the Director, Acting Executive Deputy, and Deputy Assistant Secretary addressed all specifics of the recommendations, and no further comments are required.

Appendix

Scope and Methodology

We conducted this performance audit from October 2014 through May 2015 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To perform a review of Robertson contracts, we identified 167 contracts valued at \$1 billion awarded by DoD to Robertson since 2001. The scope of this report focused on a nonstatistically selected sample of nine on-going, sole-source contracts³⁴ awarded by ACC-Redstone, NAVAIR, and DLA Aviation-Huntsville that were for commercial items according to FPDS-NG. The nine contracts had an estimated value of \$240.5 million with \$94.4 million obligated as of March 2015. The following contracts have the potential to procure 34 different fuel systems, kits, or parts.

- W58RGZ-14-D-0116 and W58RGZ-13-C-0056
- W58RGZ-11-D-0341
- W58RGZ-10-D-0029
- W58RGZ-10-D-0261
- SPRRA1-11-D-0016
- SPRRA1-14-D-0027
- SPRRA1-12-D-0065
- SPRRA1-11-D-0007
- N00019-12-C-0097

To determine whether DoD effectively procured items from Robertson, we assessed the adequacy of the sole-source justification; support for the commercial item determination; and impact a sole-source commercial procurement strategy had on the contracting officers' ability to determine whether the prices were fair and reasonable.

³⁴ Contract W58RGZ-13-C-0056 was an undefinitized contract action that was definitized under W58RGZ-14-D-0116. Therefore, contract documentation was the same for both contracts and will be considered one contract for the purposes of our review.

We contacted officials from the following offices to understand their roles and responsibilities with the sole-source justification, commercial item determination, and price reasonableness determination:

- OUSD AT&L, Defense Procurement and Acquisition Policy
- OUSD AT&L, Defense Pricing
- Assistant Secretary of the Army for Acquisition, Logistics and Technology
- ACC-Redstone
- DLA Aviation
- NAVAIR
- DCMA

We reviewed the:

- justification and approval for other than full and open competition and supporting documentation within the contract file to determine whether the awards were properly justified in accordance with FAR Subpart 6.3, “Other Than Full and Open Competition;”
- contractor’s commerciality claim and support, reviews conducted by DCMA, and the contracting officers’ documentation and determination. This included whether there were any commercial sales, military modifications, and commercial analysis reports. We compared this information to applicable regulations including:
 - FAR 2.101, “Definitions,” March 2, 2015;³⁵
 - DFARS Procedures, Guidance and Information 212.1, “Acquisition of Commercial Items – General,” January 24, 2008;
 - OUSD AT&L, Commercial Item Handbook, Version 1.0, November 2001;
 - OUSD AT&L Memorandum, “Commercial Item Determinations,” March 2, 2007; and
 - Army FAR Supplement 5112.1, “Acquisition of Commercial Items-General,” October 7, 2014.
- price negotiation documentation to determine the methods used by contracting officers to determine price reasonableness and whether a price analysis or additional data was used in accordance with FAR Subpart 15.4, “Contract Pricing,” December 26, 2014 and DFARS Procedures, Guidance and Information 215.4, “Contract Pricing,” May 28, 2014.

³⁵ Although sections of the FAR were revised after ACC-Redstone, DLA Aviation-Redstone, and NAVAIR awarded contracts within our sample, we did not identify any changes that would affect the results of our review.

We also identified instances where the contractor refused to provide the requested data and what impact a sole-source commercial procurement strategy had on the contracting officers' ability to determine whether the prices were fair and reasonable.

Use of Computer-Processed Data

We relied on computer-processed data from FPDS-NG and Electronic Document Access (EDA). FPDS-NG is an automated system that reports federal procurement spending and stores procurement award and contract data. We used FPDS-NG to develop a list of contracts awarded to Robertson Fuel Systems.

Once we identified the Robertson contracts, we downloaded those contracts from EDA. EDA stores contracts, contract delivery orders, and contract modifications. We compared the contracts, orders, and modifications obtained from EDA to the contracts, orders, and modifications in the ACC-Redstone, DLA Aviation-Redstone, and NAVAIR contract files and verified that the documentation we obtained from EDA was accurate. As a result of our analysis, we determined that the information from FPDS-NG and EDA was sufficiently reliable for the purposes of our audit.

Prior Coverage

During the last five years, the Department of Defense Inspector General (DoD IG) issued seven reports discussing pricing for sole-source commercial contracts. Unrestricted DoD IG reports can be accessed at <http://www.dodig.mil/pubs/index.cfm>.

DoD IG

DODIG-2015-120, "Defense Logistics Agency Did Not Obtain Fair and Reasonable Prices from Meggitt Aircraft Braking System for Sole-Source Commercial Spare Parts," May 8, 2015.

DODIG-2015-103, "Summary of DoD Office of Inspector General Spare-Parts Pricing Audits: Additional Guidance is Needed," March 31, 2015

DODIG-2015-058, "U.S. Air Force May be Paying Too Much for F117 Engine Sustainment," December 22, 2014

DODIG-2015-053, "Naval Supply Systems Command Needs to Improve Cost Effectiveness of Purchases for the Phalanx Close-In Weapon System," December 19, 2014

DODIG-2014-088, "Defense Logistics Agency Aviation Potentially Overpaid Bell Helicopter for Sole-source Commercial Spare Parts," July 3, 2014

DODIG-2014-054, "Defense Logistics Agency Land and Maritime Paid Too Much for High Mobility Multipurpose Wheeled Vehicle Repair Parts," April 4, 2014

DODIG-2014-020, "U.S. Army Contracting Command Did Not Obtain Fair and Reasonable Prices for Communications Equipment," December 5, 2013

Management Comments

Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

MAY 13 2015

MEMORANDUM FOR PROGRAM DIRECTOR, ACQUISITION, PARTS, AND
INVENTORY, OFFICE OF THE INSPECTOR GENERAL

THROUGH: DIRECTOR, ACQUISITION RESOURCES AND ANALYSIS

SUBJECT: Response to OIG Draft Report on Improvements Needed on DoD Procurements
from Robertson Fuel Systems (Project No. D2015-D000AT-0055.000)

As requested, I am providing a response to the recommendation contained in the subject report.


Recommendation 1: We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics issue guidance to clarify the commercial item definition in a sole-source environment when no evidence of commercial sales exists for an item being purchased and provide additional clarification as to when a modification to a commercial item is minor.

Response:

Concur. DoD has developed a proposed Defense Federal Acquisition Regulation Supplement (DFARS) rule (Case 2013- D0034, Evaluating Price Reasonableness for Commercial Items) that will clarify the commercial item definition in a sole-source environment when no evidence of commercial sales exists for an item being purchased and provide additional clarification as to when a modification to a commercial item is minor. The revised language is being issued as a proposed DFARS rule in order to afford the public an opportunity to review and comment on the proposed change. Additionally, I intend to issue a draft revision to the Commercial Item Handbook by a separate Federal Register Notice for public comment. The draft revision to the Commercial Item Handbook will complement the DFARS rule and assist the contracting officer in making such determinations.

DoD recognizes that commercial item determinations frequently require specialized knowledge of the commercial item marketplace. Therefore, I am working with the Director, Defense Contract Management Agency to establish multiple commercial pricing centers of excellence that will include such expertise to assist contracting officers in such decisions. Finally, we are establishing a commercial item module to the Contract Business Analysis Report database to archive documentation regarding commercial item determinations.

Please contact [REDACTED], if additional information is required.


Shay D. Assad
Director, Defense Pricing

Defense Logistics Agency



DEFENSE LOGISTICS AGENCY
HEADQUARTERS
8725 JOHN J. KINGMAN ROAD
FORT BELVOIR, VIRGINIA 22060-6221

MEMORANDUM FOR THE DEPARTMENT OF DEFENSE INSPECTOR GENERAL

SUBJECT: Response to DoD IG Draft Report "Improvements Needed on DoD Procurements from Robertson Fuel Systems," (Project No. D2015-D000AT-0055.00)

Attached is the Defense Logistics Agency's (DLA) response to the subject Draft Report. We appreciate the opportunity to review and comment on the finding and recommendations.

The point of contact for this audit is [REDACTED]


MATTHEW R. BEEBE
Director, DLA Acquisition

Attachment:
As stated

Defense Logistics Agency (cont'd)

Recommendation 2: We recommend that the Director, Defense Logistics Agency, DLA require contracting officers to:

Recommendation 2.a: Obtain the necessary documentation to support the commerciality of any product from Robertson, as defined by FAR Subpart 2.101. If adequate support is not obtained, deem the item noncommercial and obtain certified cost or pricing data IAW FAR part 15 or obtain a waiver where appropriate.

Recommendation 2.b: Obtain additional cost data to support price reasonableness determination or document when Robertson refuses to provide requested information in the contract files and elevate the denial to the HCA. In addition, contracting official should report the refusal in a system such as the Contractor Performance Assessment Reporting System, so it is available for use by all DoD contracting officials

Recommendation 2.c: Request "should cost" analysis to support a fair and reasonable price determination on all sole-source contract actions with Robertson when the contractor refuses to provide cost or pricing data.

DLA Response for Recommendations 2.a, 2.b and 2.c: Concur. DLA J7 will disseminate a Memorandum to the DLA Aviation Head of the Contracting Activity informing him of the finding in the audit and directing the development and implementation of procedures to ensure compliance with the recommendations in the audit. The Memorandum will be issued no later than 10 days after the DoD IG issues the final report.

DODIG PROJECT NO. D2015-D000AT-0055.000

Department of the Army

REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY MATERIEL COMMAND
4400 MARTIN ROAD
REDSTONE ARSENAL, AL 35898-5000

AMCIR

04 JUN 2015

MEMORANDUM FOR Department of Defense Inspector General (DoDIG),
██████████ Program Director, Acquisition, Parts and Inventory, 4800
Mark Center Drive, Alexandria, VA 22350-1500

SUBJECT: Command Comments on DoDIG Draft Report: Improvements Needed on
DoD Procurements from Robertson Fuel Systems, Project D2015-D000AT-0055

1. The U.S. Army Materiel Command (AMC) has reviewed the subject draft report and the response from the U.S. Army Contracting Command (ACC). AMC endorses the enclosed ACC response.
2. The AMC point of contact is ██████████
or email: ██████████

Encl

Handwritten signature of Robert J. Turzak in black ink.

ROBERT J. TURZAK
Acting Executive Deputy to the
Commanding General

Department of the Army (cont'd)



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
U.S. ARMY CONTRACTING COMMAND
3334A WELLS ROAD
REDSTONE ARSENAL, AL 35898-5000

AMSCC-IR

MAY 27 2015

MEMORANDUM FOR [REDACTED], Director, Internal Review and Audit
Compliance Office, Headquarters, U.S. Army Materiel Command, 4400 Martin Road,
Redstone Arsenal, AL 35898

SUBJECT: Draft Report Improvements Needed on DoD Procurements from Robertson
Fuel Systems (Project No. 2015-000AT-0055.000)

1. Memorandum and Draft Report, DoDIG, Draft Report Improvements Needed on DoD Procurements from Robertson Fuel Systems (Project No. D2015-000AT-0055.000) (D1503) (2687)
2. The Army Contracting Command (ACC) concurs with DoDIG recommendations.
3. The ACC POC is [REDACTED]

Encl

Bayan R. [Signature], SES
for MICHAEL R. HUTCHINSON
Deputy to the Commanding General

Printed on Recycled Paper

Department of the Army (cont'd)

Audit Report Title: Inspector General, U.S. Department of Defense, Draft Report, Improvements Needed on DoD Procurement from Robertson Fuel Systems (Project No. D2015-D000AT-0055.000), 6 May 2015

For The Commanding General, U.S. Army Contracting Command

Recommendation 2

We recommend that the Director, Defense Logistics Agency; Commanding General, U.S. Army Contracting Command; and Assistant Commander for Contracts, Naval Air Systems Command require the contracting officers to:

- a. Obtain the necessary documentation to support the commerciality of any product from Robertson, as defined by Federal Acquisition Regulation, Subpart 2.101. If adequate support is not obtained, deem the item noncommercial and obtain certified cost or pricing data in accordance with Federal Acquisition Regulation Part 15 or obtain a waiver where appropriate.
- b. Obtain additional cost data to support price reasonableness determinations or document when Robertson refuses to provide requested information in the contract files and elevate the denial to the head of the contracting activity. In addition, contracting officials should report the refusal in a system such as the Contractor Performance Assessment Reporting System, so it is available for use by all DoD contracting officials.
- c. Request "should cost" analysis to support a fair and reasonable price determination on all sole-source contract actions with Robertson when the contractor refuses to provide cost or pricing data.

COMMAND COMMENTS

ACC Concurs. HQ ACC agrees with Recommendation 2.a., 2.b. and 2.c. ACC will initiate action to ensure the ACC Contracting Officers adhere to the aforementioned recommendation requirements and will direct ACC Redstone to immediately advise their contracting officers to take action on this recommendation.

HQ ACC Policy Division will issue a Contracting Note to the ACC Contracting workforce to reiterate the recommendation requirements. This contracting note serves as leadership emphasis and as a reminder to the contracting workforce. This contracting note will be issued not later than 30 September 2015.

Department of the Army (cont'd)

HQ ACC previously initiated action in January 2015 for all ACC contracting personnel to take Commercial Item Determination (CLC 020) mandatory training during FY 2015.

HQ ACC Contracting Operations Directorate, Management Assessment Division, will follow-up on this recommendation through future Procurement Management Reviews and assessments of the ACC Contracting Centers.

Office of the Deputy Assistant Secretary of the Navy (Acquisition and Procurement)



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
RESEARCH, DEVELOPMENT AND ACQUISITION
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

08 JUN 2015

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL

SUBJECT: Draft Report on Improvements Needed on Department of Defense
Procurements From Robertson Fuel Systems

REFERENCE: (a) DODIG Draft Report No. D2015-D000AT-0055.000,
dated May 6, 2015

In response to reference (a), the attached document is forwarded providing the Department of the Navy's response to the audit report comments and recommendations as well as the status of actions either in process or planned. Questions concerning this memorandum should be directed to [REDACTED]

Elliott B. Branch
Elliott B. Branch
Deputy Assistant Secretary of the Navy
(Acquisition & Procurement)

Attachment:
As stated

Office of the Deputy Assistant Secretary of the Navy (Acquisition and Procurement) (cont'd)

NAVAL AIR SYSTEMS COMMAND RESPONSE TO
DODIG DRAFT AUDIT REPORT, "IMPROVEMENTS NEEDED ON DOD
PROCUREMENTS FROM ROBERTSON FUEL SYSTEMS",
D2015-D000AT-0055.000, DATED MAY 6, 2015

Finding: Commercial Item and Price Determinations on Robertson Fuel Systems Contracts Not Supported:

DoD did not effectively procure fuel systems and parts from Robertson on the nine nonstatistically selected, sole-source contracts that were reviewed. Specifically, contracting officers could not support the commercial item or fair and reasonable price determinations. This occurred because contracting officers did not:

- have clear guidance when they made commercial item determinations and identified a minor modification, specifically when no evidence of commercial sales existed for the items purchased on six of the nine contracts;
- obtain certified cost or pricing data or a waiver for those items that were determined noncommercial on three of the nine contracts;
- request, or Robertson refused to provide, other-than-certified cost or pricing data to support fair and reasonable price determinations for eight of the nine contracts; and
- perform adequate price analysis and relied on catalog prices or prior price history without validating those prices on eight of the nine contracts.

As a result, contracting officers did not develop an effective bargaining position and gave the contractor significant control in contract negotiations by generously applying the commercial item definition on a sole-source contract when no evidence of commercial sales existed and without evidence of minor modification. Furthermore, DoD did not obtain necessary data to determine if the \$77 million spent on these contracts was fair and reasonable. It is critical that DoD determine items noncommercial when there are no commercial sales and the items are not customarily used by the general public, identify the potential for alternative sources of supply, and use other price determination methods, such as a "should cost" analysis, to assist management in preventing future problems in similar sole-source situations.

NAVAIR Response: *NAVAIR PARTIALLY CONCURS WITH THE FINDINGS* as noted below:

- ***PARTIALLY CONCUR WITH THE FINDING*** that other-than-certified cost or pricing data was not provided to support a fair and reasonable price determination for Contract N00019-12-C-0097. NAVAIR acknowledges that Robertson did not provide sales history for the exact fuel systems used for the V-22; however, they provided commercial sales history for comparable systems that they manufacture and sell to other customers. These fuel systems have a similar installation time and were comparable in function and design; including being crashworthy, self-sealing, single-point pressure refueling, and forward area refueling. The Contracting Officer utilized this data for price analysis purposes.

Enclosure (1)

Office of the Deputy Assistant Secretary of the Navy (Acquisition and Procurement) (cont'd)

NAVAL AIR SYSTEMS COMMAND RESPONSE TO
DODIG DRAFT AUDIT REPORT, "IMPROVEMENTS NEEDED ON DOD
PROCUREMENTS FROM ROBERTSON FUEL SYSTEMS",
D2015-D000AT-0055.000, DATED MAY 6, 2015

- **PARTIALLY CONCUR WITH THE FINDING** that the price analysis relied on catalog prices or prior price history without validating those prices. NAVAIR concurs that the Contracting Officer partially relied on the catalog prices and prior price history in determining the prices to be fair and reasonable. However, prices were further validated by searching for individual component costs that are included within a fuel system package from the Federal Logistics Information System Web Search (WebFLIS) database and the NAVAIR Cost Analysis Department evaluated the escalation rates used in the catalog pricing.

Recommendation 1: We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics issue guidance to clarify the commercial item definition in a sole-source environment when no evidence of commercial sales exists for an item being purchased and provide additional clarification as to when a modification to a commercial item is minor.

No Comment on this Recommendation.

Recommendation 2: We recommend that the Director, Defense Logistics Agency; Commanding General, U.S. Army Contracting Command; and Assistant Commander for Contracts, Naval Air Systems Command require contracting officers to:

- a. Obtain the necessary documentation to support the commerciality of any product from Robertson, as defined by Federal Acquisition Regulation Subpart 2.101. If adequate support is not obtained, deem the item noncommercial and obtain certified cost or pricing data in accordance with Federal Acquisition Regulation Part 15 or obtain a waiver where appropriate.
- b. Obtain additional cost data to support price reasonableness determinations or document when Robertson refuses to provide requested information in the contract files and elevate the denial to the head of the contracting activity. In addition, contracting officials should report the refusal in a system such as the Contractor Performance Assessment Reporting System, so it is available for use by all DoD contracting officials.
- c. Request "should cost" analysis to support a fair and reasonable price determination on all sole-source contract actions with Robertson when the contractor refuses to provide cost or pricing data.

NAVAIR Response: NAVAIR *CONCURS WITH THE RECOMMENDATIONS* as noted below:

- a. **CONCUR WITH THE RECOMMENDATION.** NAVAIR plans to re-engage with Robertson regarding the commerciality of the V-22 fuel systems and kits prior to issuance of any follow-on contracts to N00019-12-C-0097.

Estimated Completion Date: 31 March 2016

Enclosure (1)

Office of the Deputy Assistant Secretary of the Navy (Acquisition and Procurement) (cont'd)

NAVAL AIR SYSTEMS COMMAND RESPONSE TO
DODIG DRAFT AUDIT REPORT, "IMPROVEMENTS NEEDED ON DOD
PROCUREMENTS FROM ROBERTSON FUEL SYSTEMS",
D2015-D000AT-0055.000, DATED MAY 6, 2015

- b. CONCUR WITH THE RECOMMENDATION.** As part of the follow-on to V-22 Contract N00019-12-C-0097, care will be taken to explicitly request within the Request for Proposal (RFP) the required cost data (if system deemed non-commercial) or other than cost and pricing data (if system deemed commercial) so there is clear direction provided. With regard to the current contract N00019-12-C-0097, other than cost and pricing data was requested by the Director, Defense Pricing, for purposes of conducting a should cost analysis, and this data will be used to ensure that the prices currently on contract and future contract prices are fair and reasonable. Although Robertson did not provide the data by the requested due date, it was provided in September 2014. The next input for the Contractor Performance Assessment Reporting System (CPARS) for the current contract N00019-12-C-0097 is due 31 October 2015. For that report, initial refusal to provide data along with their eventual compliance can be addressed.

Estimated Completion Date: 31 October 2015

- c. CONCUR WITH THE RECOMMENDATION.** As mentioned in paragraph b., a "should cost" analysis was performed by the Price Fighters based on data provided by Robertson. This report is being used to either confirm or renegotiate the final Option Exercise CLIN price on Contract N00019-12-C-0097 and to seek a downward only price adjustment of previously exercised CLINs, if applicable (per NAVAIR and Robertson agreed to special Section H-clause).

Estimated Completion Date: 30 June 2015

Classification Review: The draft should not retain the FOUO marking on page 1—the fact that Robertson manufactures self-sealing and ballistic tolerant fuel systems is information available in the public domain. See: <http://www.robrietanks.com/>. The report should retain FOUO markings on pages 8 and 9. The first paragraph of page 8 falls under FOIA Exemption 4 because it contains commercial or financial information that, if released, could harm Robertson or the V-22 Program. FOIA Exemption 5 applies to page 8 and the second paragraph of page 9 as it contains subjective evaluations, opinions and recommendations. The marking recommendations have been coordinated with AIR-11.1.

Enclosure (1)

Acronyms and Abbreviations

ACC	U.S. Army Contracting Command
DCMA	Defense Contract Management Agency
DFARS	Defense Federal Acquisition Regulation Supplement
DLA	Defense Logistics Agency
EDA	Electronic Document Access
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System – Next Generation
NAVAIR	Naval Air Systems Command
OUUSD AT&L	Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics

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