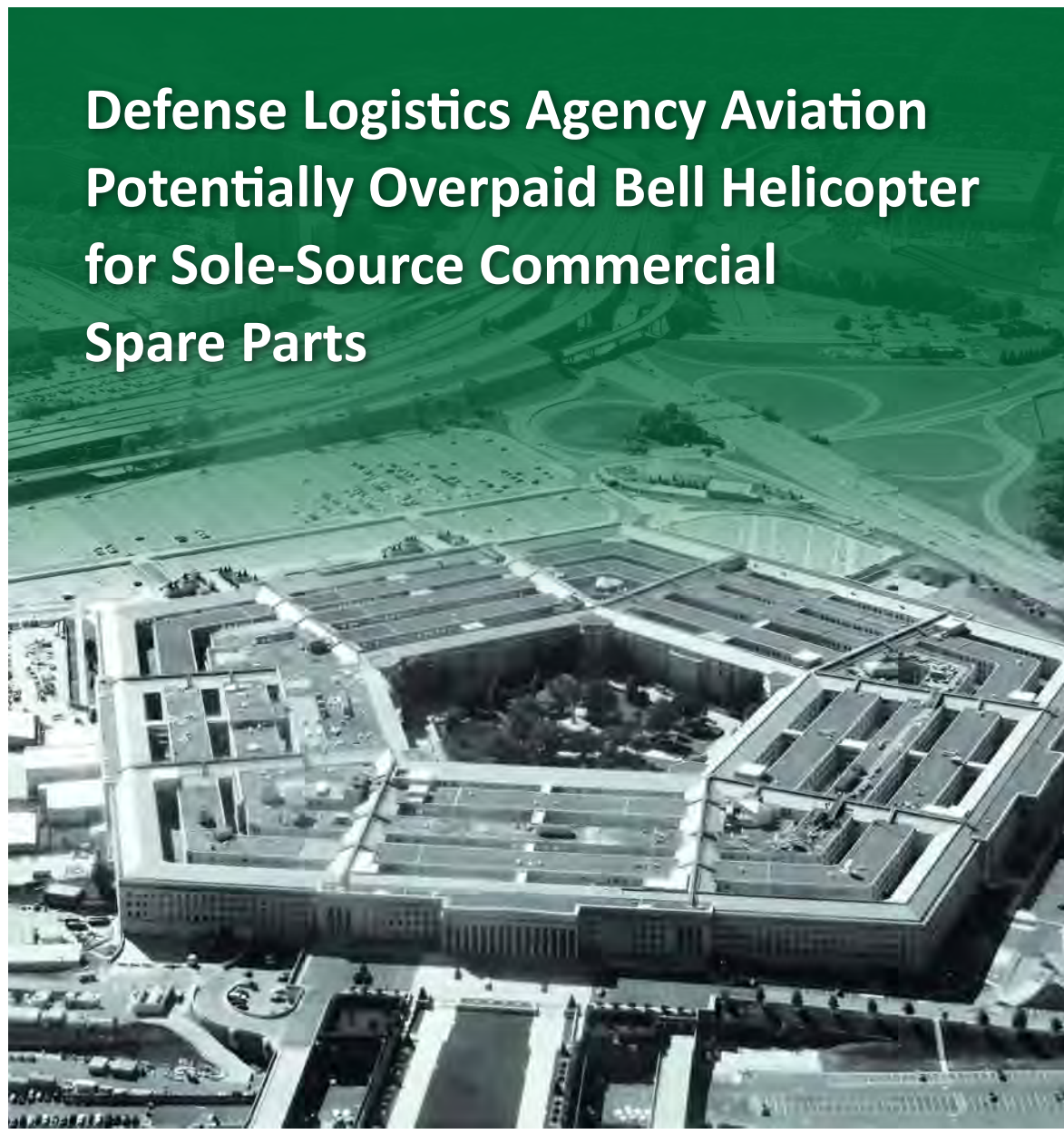


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INSPECTOR GENERAL

U.S. Department of Defense

JULY 3, 2014



Defense Logistics Agency Aviation Potentially Overpaid Bell Helicopter for Sole-Source Commercial Spare Parts

INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

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Results in Brief

Defense Logistics Agency Aviation Potentially Overpaid Bell Helicopter for Sole-Source Commercial Spare Parts

July 3, 2014

Objective

We determined whether the Defense Logistics Agency (DLA) was purchasing sole-source commercial parts at fair and reasonable prices from Bell Helicopter Textron (Bell). We selected a nonstatistical sample to perform price analysis, sales analysis, and cost analysis to determine whether the prices were fair and reasonable.

Finding

The contracting officer did not sufficiently determine whether prices were fair and reasonable for sole-source commercial parts negotiated on contract SPE4AX-12-D-9005. This occurred because the contracting officer did not perform an adequate analysis when procuring sole-source commercial parts. Specifically, the contracting officer used the previous DoD purchase price without performing historical price analysis and accepted Bell's market-based pricing strategy in a noncompetitive environment without performing a sufficient sales analysis. As a result, the contracting officer did not obtain cost data to perform cost analysis, and DLA potentially overpaid Bell about \$9 million

Finding (cont'd)

on 33 of 35 sole-source commercial spare parts reviewed. In addition, DLA may overpay as much as \$2.6 million over the next 12 months on future orders under this contract.

Recommendations

The Director, Defense Pricing, should issue guidance to establish a percentage of commercial sales that is sufficient to determine fair and reasonable prices when items are being acquired on a sole-source contract and market-based prices are used. The guidance should also require contracting officers to request "information other than cost or pricing data," to include cost data, if sales data are not sufficient.

The Director, DLA, should:

- establish a quality assurance process that reviews whether the contracting officer verifies and documents that sufficient analysis was performed to determine that the previous prices paid were fair and reasonable when conducting price analysis, in accordance with DFARS PGI 215.403-3(4);
- require the contracting officer to establish pricing for the 2-year extension for contract SPE4AX-12-D-9005 and future sole-source contracts with Bell for commercial parts by performing an adequate review of historical prices, sales data, and requesting "other than cost or pricing data" when commercial sales are not sufficient to support the use of a market-based pricing approach for sole-source commercial parts;



Results in Brief

Defense Logistics Agency Aviation Potentially Overpaid Bell Helicopter for Sole-Source Commercial Spare Parts

Recommendations (cont'd)

- require the contracting officer to assess and implement available options to voluntarily recover from Bell about \$9 million in excessive payments; and
- require the contracting officer to perform a sales analysis and, if necessary, a cost analysis, on the remaining sole-source commercial spare parts on contract SPE4AX-12-D-9005 and request a voluntary refund from Bell for any identified overpayments.

Management Comments

Comments from the Director, Defense Pricing, addressed Recommendation 1. No further comments are required. Comments from the Director, DLA addressed Recommendation 2.a, but did not address Recommendation 2.b.(2) and partially addressed Recommendations 2.b.(1) and 2.b.(3). Therefore, we request additional comments on Recommendation 2 as specified in the Recommendations Table on the next page.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Director, Defense Pricing		1
Director, Defense Logistics Agency	2.b.1, 2.b.2, 2.b.3	2.a

Please provide comments by August 4, 2014.

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INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

July 3, 2014

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,
TECHNOLOGY, AND LOGISTICS
DIRECTOR, DEFENSE LOGISTICS AGENCY

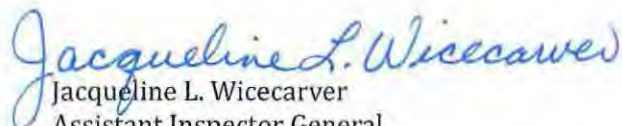
SUBJECT: Defense Logistics Agency Aviation Potentially Overpaid Bell Helicopter for Sole-Source Commercial Spare Parts (Report No. DODIG-2014-088)

We are providing this report for review and comment. Defense Logistics Agency did not obtain fair and reasonable prices for Bell Helicopter Textron sole-source commercial spare parts. We determined that the Defense Logistics Agency potentially overpaid Bell Helicopter Textron about \$9 million more than fair and reasonable prices for 33 of 35 sole-source commercial spare parts. We considered management comments on a draft of this report when preparing the final report.

DoD Directive 7650.3 requires that recommendations be resolved promptly. Comments from the Director, Defense Pricing addressed all specifics of the recommendation, and no further comments are required. Comments from the Director, Defense Logistics Agency partially addressed the recommendations. Therefore, we request the Director, Defense Logistics Agency provide additional comments on Recommendations 2.b(1), 2.b(2), and 2.b(3) by August 4, 2014.

Please send a PDF file containing your comments to audapi@dodig.mil. Copies of your comments must have the actual signature of the authorizing official for your organization. We cannot accept the /Signed/ symbol in place of the actual signature. If you arrange to send classified comments electronically, you must send them over the SECRET Internet Protocol Router Network (SIPRNET).

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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Acronyms and Abbreviations



Introduction %

Objective

The overall objective of this audit was to determine whether the Defense Logistics Agency (DLA) was purchasing sole-source commercial parts at fair and reasonable prices from Bell Helicopter Textron (Bell). See Appendix A for a discussion of the scope and methodology and prior coverage related to the objective.

Background

DLA, headquartered at Fort Belvoir, Virginia, provides the Army, Navy, Air Force, Marine Corps, other Federal agencies, and combined allied forces with a full spectrum of logistics, acquisition, and technical services. DLA provides nearly 100 percent of the consumable items that America's forces need to operate, such as food, fuel, energy, medical supplies, and uniforms. DLA Aviation performs material management for the U.S. military, supporting more than 1,800 major weapon systems and is the manager for more than 1.1 million repair parts and operating supply items.

Bell Helicopter Textron

Bell, founded in 1935, is a division of Textron, headquartered in Fort Worth, Texas, has plants in Amarillo, Texas, and Mirabel, Canada. In addition, Bell has logistic and service centers in Europe, Canada, and Singapore. According to Bell, it is one of the leading suppliers of military and commercial helicopters, tiltrotor aircraft, and related spare parts and services in the world. Bell's primary U.S. Government programs are the V-22 tiltrotor aircraft and the H-1 helicopter. Bell also continues to support the OH-58D helicopter. Bell provides more than 2,700 replacement parts and accessories to manufacturers and operators worldwide. In 2012, U.S. Government contracts generated about 59.7 percent (\$2.6 billion) of Bell's revenues.

Contract SPE4AX-12-D-9005

(FOUO) On February 23, 2012, DLA Aviation-Philadelphia awarded a 3-year, \$87.3 million, requirements-type, sole-source contract,¹ SPRPA1-12-D-007W, to Bell for support of 1,162 commercial items² required for the Navy/Marine Corps H-1

¹ The contract provided the Government's best estimated quantities or estimated annual demands and that actual quantities would be stipulated on each order issued under the contract.

² DLA issued a contract modification on March 29, 2012, to remove nine duplicative parts. As a result of this modification, the total number of parts was 1,153, valued at about \$86.8 million.

(FOUO) and Army OH-58 helicopters, shown in Figure 1. DLA Aviation–Philadelphia modified the contract on June 25, 2012, to add noncommercial items, increasing the total value of the contract to \$128 million. The contract number later changed from SPRPA1-12-D-007W to SPE4AX-12-D-9005 and DLA Aviation–Richmond became the



(FOUO) new contracting office. DLA Aviation-Philadelphia certified all items under this contract as sole-source. According to the justification and approval, only Bell has the expertise, capacity, capability, and proficiency required to fulfill these requirements. DLA Aviation-Philadelphia issued a contract modification on September 18, 2013, to extend the period of performance by 2 years until February 22, 2017. The contracting officer estimated pricing for this extension will occur between the first half of 2014 and February 2015.

Audit Sample of Spare Parts

To perform a price analysis review, we selected a nonstatistical sample of 84 commercial parts valued at \$29.2 million. The 84 parts represented about 71.5 percent of the total-dollar value of commercial spare parts purchased from Bell on contract SPE4AX-12-D-9005 as of May 17, 2013. We performed a price analysis to identify indicators of significant price increases. Based on the results of the price analysis, we performed a sales analysis on selected parts with significant price increases. We selected 42 parts from this list on which to perform commercial sales analysis. From the sales analysis, we determined parts that did not have significant commercial sales on which to perform a cost analysis. Of those 42 parts, we selected 35 parts to perform cost analysis and to determine the reasonableness of contract prices. See Appendix A for detailed information on the sample selection methodology.

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 an internal control weakness for purchases of sole-source commercial spare parts from Bell. Specifically, the contracting officer did not perform an adequate analysis when purchasing sole-source commercial parts. 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 and DLA.

Finding %

Defense Logistics Agency Did Not Determine a Fair and Reasonable Price for Sole-Source Commercial Spare Parts

The contracting officer did not sufficiently determine whether the prices were fair and reasonable for sole-source commercial parts negotiated on contract SPE4AX-12-D-9005. We selected a nonstatistical sample to perform price analysis, sales analysis, and cost analysis to determine whether the prices were fair and reasonable. Prices were not sufficiently determined fair and reasonable because the contracting officer did not perform an adequate analysis when procuring sole-source commercial parts. The contracting officer:

- used the previous DoD purchase price without performing historical price analysis;³ and
- accepted Bell's market-based⁴ pricing strategy in a noncompetitive environment without performing a sufficient sales analysis.

As a result, the contracting officer did not obtain cost data to perform cost analysis and DLA potentially overpaid Bell about \$9 million out of \$13.4 million on 33 of 35 sole-source commercial spare parts reviewed. Additionally, DLA may overpay as much as \$2.6 million over the next 12 months on future orders under this contract.

³ We defined "historical price analysis" as reviewing the price history for the parts over multiple years. We do not consider the most recent purchase price paid to be a historical price analysis.

⁴ In Bell's market-based pricing strategy, prices are driven by factors such as competition, demand, and price sensitivity for a part.

Contracting Officer Should Review Historical Prices

The contracting officer did not sufficiently determine whether prices were fair and reasonable because the contracting officer used the previous purchase price paid and did not perform a historical price analysis when performing the price reasonableness review. Federal Acquisition Regulation Subpart 15.4, "Contract Pricing," states that when acquiring a commercial item, like the Bell sole-source commercial parts, contracting officials are not required to obtain certified cost or pricing data from the contractor.

However, at a minimum, contracting officials must use price analysis to determine whether the price proposed is fair and reasonable. Contracting officials must request “data other than certified cost or pricing data” to support further analysis if a determination cannot be made based on the price analysis alone. The contracting officer requested assistance, on August 26, 2011, from the DLA Aviation Cost and Price Analysis Division⁵ in Richmond, Virginia, to provide the last Government purchase price paid for the commercial parts proposed for the contract. In August 2011, a DLA Aviation Cost and Price Analysis Division analyst provided the contracting officer with the last purchase price paid for the items requested and further direction about negotiating prices on the Bell contract. Specifically, the analyst indicated that the use of the last purchase price paid was inadequate to perform price analysis for the sole-source commercial parts on this contract. The DLA Aviation Cost and Price Analysis Division recommended that the contracting officer review the price history for the parts because several parts had significant price increases based on their analysis. For example, the DLA analyst identified that a pin (national stock number [NSN] 5315-01-185-8917) cost (b) (4) in 2006 and cost (b) (4) in 2011, an increase of about (b) (4) percent. Figure 2 shows the pin.



⁵ According to the DLA Aviation Cost and Price Analysis Division Chief, the division was a resource that DLA contracting officers could consult when determining price reasonableness.

~~(FOUO)~~ The contracting officer acknowledged the DLA Aviation Cost and Price Analysis Division's recommendation in the price negotiation memorandum but stated that the prices reviewed for the commercial items proposed on the contract were based on the previous Bell contract. Therefore, the contracting officer used the previous DoD purchase price rather than price history to determine price reasonableness. The contracting officer analyzed how much the proposed price increased from the previous purchase price and identified 229 parts with a price increase greater than 25 percent. The contracting officer attempted to obtain more information on these parts to support the proposed prices. However, according to the contracting officer, Bell refused to provide any additional information other than sales data. The contracting officer removed these 229 parts from the negotiations because of the lack of agreement on the price. The contracting officer accepted the prices offered for the remaining 1,153 sole-source commercial parts with increases of less than 25 percent as fair and reasonable based on the purchase price analysis.

DLA purchased 704 of the 1,153 commercial parts on the contract as of May 17, 2013. To identify potentially excessive prices that increased without explanation, we compared historical DoD purchase prices for the nonstatistical sample of 84 of the 704 parts. Specifically, we compared prices that DLA paid in 2012 and 2013 to those paid from 2003 through 2010. We determined that DLA

DLA paid prices as much as 852.5 percent higher than historical prices.

paid prices as much as 852.5 percent higher than historical prices. See Appendix A for detailed information on the historical price analysis and Table 1 in Appendix B for the historical price analysis of the 84 parts. For example, Bell proposed and DLA accepted a unit price of \$(b) (4) for a pin (NSN 5315-01-185-8917); however, we calculated that the inflated unit price should have been \$(b) (4).⁶

This significant increase resulted in an (b) (4) percent price difference. In another example, as of May 17, 2013, DLA paid a weighted unit price of \$(b) (4) for an inner cap (NSN 1615-01-185-3082). Based on our analysis of historical prices, we calculated that the inflated unit price should have been \$(b) (4). This resulted in an increase of (b) (4) percent from the historical to the proposed price. Figure 3 shows the inner cap.

⁶ To inflate the May 2009 unit price of \$49.71 to the November 2012 unit price, we used Producer Price Index WPU1425—Other Aircraft Parts and Equipment from the Bureau of Labor Statistics, the principal Federal agency for measuring labor market activity, working conditions, and price changes. The agency's Producer Price Index program measures changes in average selling prices of commercial products, including aircraft parts and equipment.



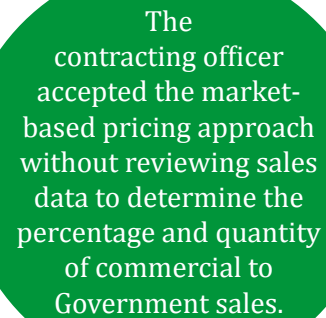
Figure 3. Inner Cap
Source: DLA Distribution, New Cumberland, Pennsylvania

The contracting officer additionally did not determine whether the previous purchase price paid was fair and reasonable. The Defense Federal Acquisition Regulation Supplement (DFARS) Procedures, Guidance, and Information (PGI) 215.403-3(4), “Reliance on prior prices paid by the Government,” requires the contracting officer to verify and document that sufficient analysis was performed to determine that the prior price was fair and reasonable when relying on a prior price paid by the Government. The contracting officer should complete a thorough price analysis on future contract actions, including the 2-year extension for the current contract, with Bell for sole-source commercial parts. The analysis should include a review of historical prices to determine whether prices paid in the past had significant unexplained increases. DLA should establish a quality assurance process that reviews

whether the contracting officer verifies and documents that sufficient analysis was performed to determine that the previous prices paid were fair and reasonable.

Contracting Officer Did Not Perform Sales Analysis

~~(FOUO)~~ The contracting officer did not determine whether prices were fair and reasonable because the contracting officer accepted Bell's market-based pricing strategy in a noncompetitive environment without performing a sufficient sales analysis for the 1,153 sole-source commercial items. Bell's policy is to use a market-based pricing strategy if an item is commercial. The contracting officer accepted the market-based pricing approach without reviewing sales data to determine the percentage and quantity of commercial to Government sales. DFARS PGI 215.404-1(a)(iii), "Proposal Analysis Techniques," requires the contracting officer to obtain "information other than cost or pricing data"⁷ if previous sales information is not sufficient to determine price reasonableness and, if necessary, perform a cost analysis. As part of his analysis, the contracting officer requested sales data for 312 of the 1,153 commercial parts which Bell proposed as "first-time commercial." However, the contracting officer used Bell's sales data to verify only that sales were to commercial companies and represented sales of 5 percent or more to commercial companies.



The contracting officer accepted the market-based pricing approach without reviewing sales data to determine the percentage and quantity of commercial to Government sales.

Because adequate competition does not exist, the acceptance of the market-based price as fair and reasonable is questionable on a sole-source contract. The contracting officer should perform a more thorough analysis of the sales data when this situation occurs. In the past, acquisition guidance indicated that sales data were sufficient if an item had 55 percent or more commercial sales. However, the specific percentage in the guidance was later removed, and current guidance does not exist that defines what percentage of commercial sales is sufficient. According to the Director, Defense Pricing, he has preliminarily considered 50 percent or more commercial sales as sufficient to accept market-based prices when determining fair and reasonable prices. Defense Pricing officials plan to establish a sufficient percentage in an upcoming policy memorandum to be issued by their office. Due to the lack of existing guidance

⁷ The term "information other than cost or pricing data" was used in the DFARS PGI 215.4 that was in effect during the time of contract negotiations, and to remain consistent, we used this version throughout the report.

defining a sufficient percentage, we identified items with commercial sales of less than 45 percent as inadequate to accept market-based prices as fair and reasonable.

~~(FOUO)~~ We nonstatistically selected 42 of the 84 parts from our price analysis to determine whether commercial sales supported the market-based price. Based on sales data provided by Bell and using our 45 percent or less commercial sales determination, we identified that commercial sales for 35 of the 42 parts were not adequate to support the use of a market-based pricing strategy. Specifically, commercial sales for these 35 parts ranged from 0 percent to 41.4 percent. For example, from 2008 through 2010,⁸ 5 of the 35 parts had no commercial sales. In another example, commercial sales for a shim peel (NSN 5365-01-185-3084) totaled ~~(b) (4)~~ whereas DoD purchased 1,754 of the same part resulting in commercial sales of ~~(b) (4)~~ percent. Figure 4 shows the shim peel.



⁸ We used sales data for 3 years before the 2011 negotiations in our sales analysis because that was the timeframe the contracting officer would have had available during negotiations.

(FOUO) Finally, the commercial sales for a seal holder (NSN 1615-00-521-5247) were only (b) (4) percent. DoD purchased 82, whereas commercial sales for the same part were only (b) (4). Figure 5 shows the seal holder.

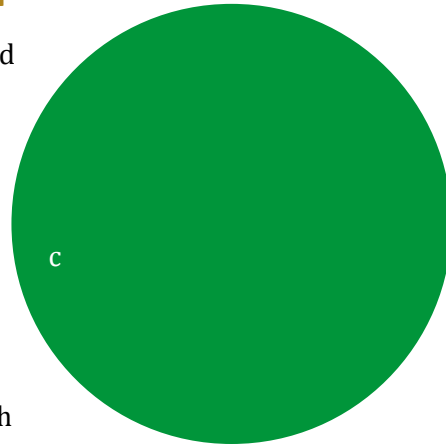


We determined that commercial sales for 7 of the 42 parts were greater than 45 percent, thereby supporting the reasonableness of the market-based price. See Table 2 in Appendix B for the results of our sales analysis of the 42 parts. The Director, Defense Pricing, should issue guidance to establish a percentage of commercial sales that is sufficient to determine fair and reasonable prices when items are being acquired on a sole-source contract and market-based prices are used. The guidance should also require contracting officers to request “information other than cost or pricing data,” to include cost data, if sales data are not sufficient.

The contracting officer should complete a thorough sales analysis on future contract actions, including the 2-year extension for the current contract, with Bell for sole-source commercial parts. The analysis should include a review of sales data to determine if the commercial sales are sufficient to support the use of a market-based pricing approach. Contracting officers should obtain “information other than cost or pricing data” if sufficient sales do not exist, to include cost information, to perform cost analysis of the parts to determine price reasonableness.

Cost Analysis Was Not Performed

The contracting officer did not obtain cost data and perform cost analysis for all 1,153 sole-source commercial parts on contract SPE4AX-12-D-9005. We subpoenaed cost data and performed cost analysis on the 35 of 42 parts without adequate commercial sales based on the results of our sales analysis. Based on our cost analysis, DLA potentially overpaid Bell about \$9 million⁹ out of \$13.4 million on 33 of 35 spare parts with commercial sales of less than 45 percent and prices as much as 1,725.2 percent greater than fair and reasonable.



Additionally, we identified 2 of the 35 parts in which Bell did not recover all costs or received a lower profit.¹⁰ For these two parts, Bell lost \$230,967. See Table 3 in Appendix B for a detailed breakout of the cost analysis for the 35 parts. Although we analyzed only 35 of the 1,153 parts, excessive prices may also exist on the remaining parts that we did not review. Therefore, DLA should perform a sales analysis and, if necessary, a cost analysis, on prices negotiated for the remaining sole-source commercial parts on the contract and request a voluntary refund for any identified overpayments.

The following paragraphs provide three examples of our analysis using cost information provided by Bell.

⁹ Potential overpayment was calculated using contract prices and costs provided by Bell for the 35 parts reviewed. See Appendix A for details.

¹⁰ ~~(FOUO)~~ According to the (Post Sole-Source) Price Negotiation Memorandum, DLA agreed to a ~~(U)~~ -percent profit for the noncommercial parts on this contract. The audit team applied the same profit percentage to determine a fair and reasonable price for the commercial parts.

~~(FOUO)~~ Bell charged DLA a weighted average¹¹ of \$(b) (4) per unit for a support (NSN 1560-00-450-6861); however, we determined that the part should have cost a weighted average of \$(b) (4) DLA paid Bell \$(b) (4) (b) (4) percent) over the fair and reasonable price for the 116 units purchased as of January 15, 2014. Figure 6 shows the support.



¹¹ See Footnotes 2 and 4 of Table 3 in Appendix B for an explanation of the weighted average calculations used for cost analysis.

(FOUO) In another example, Bell charged DLA \$(b)(4) per unit for a strap assembly (NSN 1615-01-256-8198); however, we determined that the part should have cost a weighted average of \$(b)(4) DLA paid Bell about \$(b)(4) ((b)(4) percent) over the fair and reasonable price for the 213 units purchased as of January 15, 2014. Figure 7 shows the strap assembly.

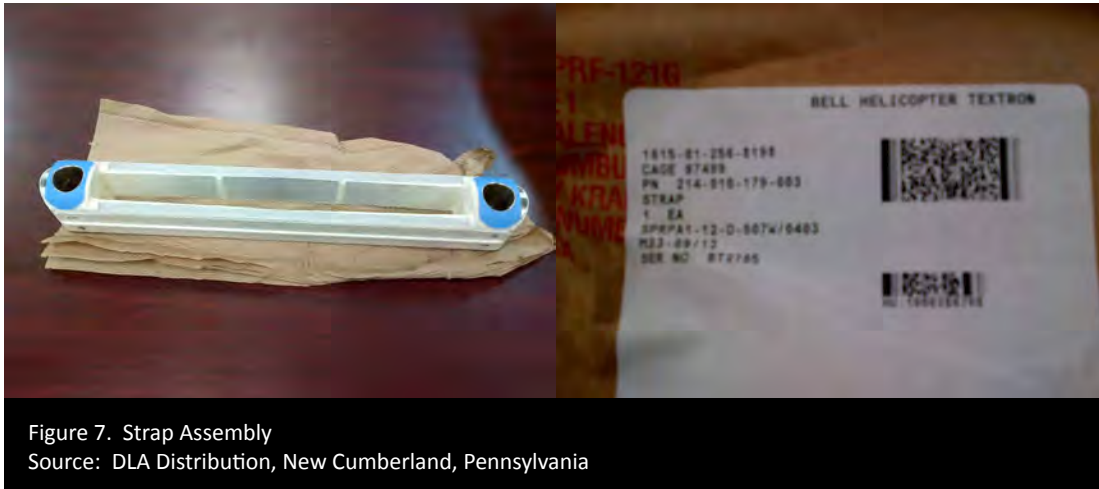


Figure 7. Strap Assembly
Source: DLA Distribution, New Cumberland, Pennsylvania

(FOUO) Finally, Bell charged DLA \$(b)(4) per unit for a bushing (NSN 3120-01-185-3171); however, we determined that the part should have cost a weighted average of \$(b)(4) DLA paid Bell \$(b)(4) ((b)(4) percent) over the fair and reasonable price for the 669 units purchased as of January 15, 2014. Figure 8 shows the bushing.



Figure 8. Bushing
Source: DLA Distribution, New Cumberland, Pennsylvania

By not performing historical price analyses and accepting Bell's market-based pricing in a sole-source environment, DLA may overpay as much as \$2.6 million over the next 12 months on future orders under this contract. Contracting officers should improve their price reasonableness determination processes before procuring future sole-source commercial parts from Bell. DLA should request a voluntary refund from Bell for about \$9 million in potential overpayments in accordance with DFARS Subpart 242.71.¹²

Recommendations, Management Comments, and Our Response

Recommendation 1

We recommend that the Director, Defense Pricing, issue guidance to establish a percentage of commercial sales that is sufficient to determine fair and reasonable prices when items are being acquired on a sole-source contract and market-based prices are used. The guidance should also require contracting officers to request “information other than cost or pricing data,” to include cost data, if sales data are not sufficient.

Defense Pricing Comments

The Director, Defense Pricing, agreed, stating that DoD is working on additional guidance for contracting officers to require evidence that the ratio of commercial to Government sales supports the conclusion that the item is commercial and not dominated by Government procurement. In addition, he acknowledges that DFARS PGI 215.404-1, which provides methods for the contacting officer when facing resistance, is insufficient when a contractor repeatedly refuses to provide other than certified cost or pricing data. To help the contracting officers in their analysis efforts, he developed the Pricing Centers of Excellence and the Contract Business Analysis Repository Information database to supplement and improve the pricing skills of the acquisition workforce. The Pricing Centers provide pricing experts to advise and assist contracting officers. The Contract Business Analysis Repository Information is a database of pricing information that provides data whereby users can acquire supplies and services at the best value.

¹² (DFARS Subpart 242.71, “Voluntary Refunds,” states that a voluntary refund is a payment or credit to the Government from a contractor that is not required by any contractual or legal obligation.

Our Response

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

Recommendation 2

We recommend that the Director, Defense Logistics Agency:

- a. Establish a quality assurance process that reviews whether the contracting officer verifies and documents that sufficient analysis was performed to determine that the previous prices paid were fair and reasonable when conducting price analysis and using historical prices paid, in accordance with Defense Federal Acquisition Regulation Supplement, Procedures, Guidance, and Information 215.403-3(4).**

Defense Logistics Agency Comments

The Director, DLA Acquisition, agreed, stating that in February 2014 guidance was issued and later incorporated into the Defense Logistics Acquisition Directive that included adjustments to the required price negotiation memorandum checklist. The checklist requires contracting officers to document an explanation of the price analysis performed, the basis or estimating technique used to determine price reasonableness, an explanation of any price analysis performed by cost element, and the submission of data other than cost or pricing data that was necessary to determine a reasonable price. The Director stated that the price negotiation memorandum and checklist are available for review by the contracting officer assigned to future procurements, which provides a documented basis for determining how previous prices paid were deemed to be fair and reasonable.

Our Response

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

b. Require the Defense Logistics Agency Aviation contracting officer to:

- (1) establish pricing for the 2-year extension for contract SPE4AX-12-D-9005 and future sole-source contracts with Bell Helicopter Textron for commercial parts by performing an adequate review of historical prices, sales data, and requesting “information other than cost or pricing data,” to include cost information, when commercial sales are not sufficient to support the use of a market-based pricing approach for determining fair and reasonable prices for sole-source commercial parts;**

Defense Logistics Agency Comments

The Director, DLA Acquisition, partially agreed, stating that DLA will establish pricing for the 2-year extension on contract SPE4AX-12-D-9005 as well as for future sole-source contracts in accordance with current Federal Acquisition Regulation and DFARS guidance. He stated that DLA has and will continue to request information other than cost or pricing data when appropriate. Specifically for Bell, DLA will request commercial sales pricing data to review the percentage of Government and commercial sales and verify that DLA is receiving a discount off the commercial price. The Director explained that Bell has consistently refused to provide cost data for commercial parts; therefore, DLA does not believe they have the ability to obtain cost data. The Director stated that DLA will request assistance from the Defense Contract Management Agency to perform an analysis of Bell’s sales data and that DLA will follow the procedures in DFARS PGI 215.404-1(a) if additional data, such as cost data, is needed to determine price reasonableness.

Our Response

Comments from the Director, DLA Acquisition, partially addressed the recommendation. Specifically, the Director stated that DLA contracting officers would comply with Federal Acquisition Regulation and DFARS guidance and follow procedures in DFARS PGI 215.404-1(a) if additional data is needed to determine price reasonableness. Although DLA will request sales data, the comments did not indicate that the analysis of sales data would ensure that a sufficient percentage and quantity of commercial to Government sales exists to support the use of a market-based price. For example, Bell’s commercial sales for 5 of the 42 parts reviewed during the audit were 0 percent. Had the contracting officer completed a thorough sales analysis to determine whether

the government was the only or predominant customer buying the item, he would have identified that the use of a market based price was not supported by a sufficient market share and identified the need for additional data.

In addition, the Director stated that DLA has requested cost data from Bell in the past. However, the contracting officer was not able to provide any written documentation of the request, refusal, or elevation of the request through his contracting activity. The contracting officer needs to follow DFARS PGI 215.404-1(a) and document in writing any Bell refusal to provide data needed to determine price reasonableness and to elevate the refusal within the contracting activity, including the head of the activity. We request that the Director, DLA, provide comments to the final report related to performing the analysis of sales data to identify whether the use of a market-based price is supported by a sufficient market share. In addition, provide comments on DLA's intent to request the additional other than cost or pricing data needed from Bell and document Bell's refusal to provide the data, if applicable.

(2) assess and implement available options to recover from Bell Helicopter Textron about \$9 million in excess payments on contract SPE4AX-12-D-9005, including voluntary refunds, in accordance with Defense Federal Acquisition Regulation Supplement Subpart 242.71; and

Defense Logistics Agency Comments

The Director, DLA Acquisition, disagreed, stating that DLA procured the parts under current commercial contracting procedures and pricing methodology and obtained prices ^{(b) (4)} than the commercial price. Furthermore, he stated that the prices on the contract were determined to be fair and reasonable in accordance with current Federal Acquisition Regulation and DFARS commercial item pricing guidance. He also stated that the contract contains a clause that requires a further reduction in DLA's price when or if a commercial customer receives a lower price.

Our Response

The response did not address the specifics of the recommendation. Specifically the response did not address DLA actions to request a voluntary refund from Bell for the \$9 million in identified overpayments. Commercial sales for the 35 parts discussed are insufficient to solely support the market-based price for determining

price reasonableness in a sole source environment. When a sufficient percentage of government to commercial sales does not exist, additional analysis should be performed by obtaining other than cost or pricing data. Cost data obtained and analyzed fully supported about \$9 million in overpayments for the 35 parts on contract SPE4AX-12-D-9005. Therefore, DLA needs to implement available options to recover the excess payments from Bell, including requesting a voluntary refund in accordance with DFARS Subpart 242.71. We request that the Director, DLA, provide comments to the final report.

(3) perform a sales analysis and, if necessary, a cost analysis, on the remaining sole-source commercial spare parts on contract SPE4AX-12-D-9005 and request a voluntary refund from Bell Helicopter Textron for any identified overpayments, in accordance with Defense Federal Acquisition Regulation Supplement Subpart 242.71.

Defense Logistics Agency Comments

The Director, DLA Acquisition, partially agreed, stating that DLA completed a sales analysis, based on Bell-provided sales data, of all the parts procured on the contract. With assistance from the Integrated Support Team technical team, the contracting officer performed sales analysis on 312 parts that were offered as first-time commercial, and the contracting officer for the prior contract completed the sales analysis for the remaining 1,153 parts. The director explained that the sales analysis was used to obtain the percentage of sales to the Government and to commercial customers and to verify that the prices offered by Bell were discounted off Bell's commercial catalog prices. The Defense Contract Management Agency confirmed that a ^{(b) (4)} was applied.

In respect to performing cost analysis on commercial parts, the Director, DLA Acquisition, stated that Bell had refused to provide non-certified cost data after repeated requests since 2008. In addition, he stated that Bell provided cost data to the DoD IG only after the issuance of a subpoena and that DLA does not have the same subpoena power to obtain cost data and therefore is unable to perform cost analysis to comply with the recommendation.

Our Response

(FOUO) The Director's response did not address the specifics of the recommendation. Although the contracting officer requested sales data for the 312 first-time commercial parts, the contracting officer did not use the data to determine whether a sufficient percentage of government to commercial sales existed for all parts to support the use of the market-based price when determining price reasonableness. Additional analysis is required in sole-source situations where adequate commercial sales do not exist. The contracting officer should perform a sales analysis of market share for the remaining parts on the contract. If the analysis indicates that adequate commercial sales do not exist, then the contracting officer should request from Bell information other than cost or pricing data, including cost information, to support further analysis. If Bell refuses to provide the cost information, then the contracting officer needs to follow the procedures within DFARS PGI 215.404-1(a) to document and elevate the refusal. In addition, if identified, the contracting officer should request a voluntary refund from Bell for any identified overpayments, in accordance with DFARS Subpart 242.71. We request that the Director, DLA, provide comments to the final report.

Appendix A %

Scope and Methodology

We conducted this performance audit from April 2013 through April 2014 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 finding and conclusions based on our audit objective.

To determine whether DLA purchased sole-source spare parts at fair and reasonable prices from Bell, we reviewed contract documentation from March 31, 2011, through May 17, 2013, for contract SPE4AX-12-D-9005. We later updated our review to include additional delivery orders placed on the contract through January 15, 2014.

In July 2013, we informed Bell that we would request cost data during our site visit. When we met with Bell in August 2013, the contractor would not provide cost data. On September 19, 2013, we issued an Office of the Inspector General subpoena to Bell General Counsel for documents relating to information “other than certified cost or pricing data” used to establish unit prices for 42 sole-source commercial parts on contract SPE4AX-12-D-9005. On November 8, 2013, December 17, 2013, and January 20, 2014, Bell provided bills of material, manufacturing labor estimates, global outline agreements, purchase order histories, and purchase orders to support its costs of the commercial spare parts.

To accomplish the audit objectives, we interviewed officials from the following offices to understand their roles and responsibilities concerning contract SPE4AX-12-D-9005:

- Office of the Under Secretary of Defense, Acquisition, Technology, and Logistics, Director, Defense Pricing;
- Office of the Under Secretary of Defense, Acquisition, Technology, and Logistics, Defense Procurement and Acquisition Policy;
- DLA Aviation at Richmond, Virginia, and Philadelphia, Pennsylvania;
- Defense Contract Audit Agency Bell Helicopter Resident Office, Fort Worth, Texas;

- Defense Contract Management Agency Bell Helicopter, Fort Worth, Texas; and
- Bell Helicopter Textron, Hurst, Texas.

We reviewed applicable regulations and guidance on contract pricing, contract administration, and commercial item procurements, including Federal Acquisition Regulation Subpart 15.4, “Contract Pricing”; DFARS Subpart 215.4, “Contract Pricing”; and DFARS PGI 215.4, “Contract Pricing.” In addition, we reviewed Bell’s Commercial Item Determination Board policy document.

We reviewed contract SPE4AX-12-D-9005, delivery orders and modifications, price negotiation memorandums, justification and approval for other than full and open competition, acquisition plan, commercial item determinations, and forward pricing rate agreements. We interviewed officials at DLA Aviation and Bell to determine whether DLA purchased commercial spare parts at fair and reasonable prices.

Audit Sample Of Spare Parts

We selected a nonstatistical sample from all commercial parts DLA purchased with delivery orders and modifications issued against contract SPE4AX-12-D-9005 from March 6, 2012, through May 17, 2013. The total commercial parts purchased consisted of 704 parts, valued at \$40.8 million as of May 17, 2013.

Price Analysis

We selected all commercial parts with an extended value of \$100,000 or more, which equated to 84 parts, valued at \$29.2 million or 71.5 percent of the commercial universe of 704 parts. We used IHS Haystack Gold and Electronic Document Access (EDA) to identify prior acquisition unit prices. The majority of the significant price increases occurred from 2007 through 2009. We inflated all prior acquisition unit prices to November 2012 levels using Bureau of Labor Statistics Producer Price Index WPU1425–Other Aircraft Parts and Equipment. We compared weighted average unit prices from the current contract to inflated prior acquisition unit prices to identify parts with significant pricing differences. We calculated weighted averages of quantities bought in year 1 and a portion of year 2 by dividing the total price paid by the total quantity purchased. See Table 1 in Appendix B for the analysis.

Sales Analysis

From the 84 parts included in the price analysis, we identified price differences between the weighted average price and the inflated unit price. We selected 36 parts with a price increase of 65 percent or more. In addition, we included 4 parts identified as first-time commercial with a price increase of more than 25 percent, and 2 parts that had a decrease in price, totaling 42 parts on which we performed sales analysis. Using Bell's commercial and Government sales data from 2008 through 2010, we performed a sales analysis on the 42 parts to determine which prices were not supported by at least 45 percent commercial sales. See Table 2 in Appendix B for the analysis.

Cost Analysis

~~(FOUO)~~ From the 42 parts included in our sales analysis, we identified that 35 of the 42 parts had less than 45 percent of commercial sales and selected those parts to perform a cost analysis. Using Bell's direct material costs and estimated labor hours obtained through our subpoena, we calculated a fair and reasonable price for the 35 parts. We applied the November 9, 2011, forward pricing rates¹³ for material burdening, manufacturing, and tool make, and the September 11, 2012, Defense Contract Management Agency forward pricing rate recommendation for quality labor to the direct material costs and estimated labor hours to establish a burdened unit cost. We then applied a ^{(b) (4)} profit to the burdened cost to establish our year 1 fair and reasonable price. The profit rate used was obtained from the (Post Sole-Source) Price Negotiation Memorandum in which DLA agreed to a ^{(b) (4)} profit for the noncommercial parts on this contract. We added the negotiated ^{(b) (4)} escalation rate to calculate our fair and reasonable prices for year 2 and year 3. We then compared our calculated prices to the current contract prices to determine whether prices were fair and reasonable. See Table 3 in Appendix B for the analysis.

Use of Computer-Processed Data

We relied on computer-processed data from DoD and commercial sources. We used EDA to determine the universe of delivery orders on contract SPE4AX-12-D-9005 and obtain electronic copies of the delivery orders and modifications, and other contract documentation. The universe consisted of 3,764 contract line items, from which the DoD Office of Inspector General Quantitative Methods Division statistically selected

¹³ Forward pricing rates, agreed to between Bell and Defense Contract Management Agency, are labor and burdening rates that are applied to Bell production costs.

a sample of 45 contract line items. We obtained copies of the delivery orders and modifications from DLA supporting the 45 contract line items and verified them against the data obtained from EDA.

We used IHS Haystack Gold to identify the procurement history, to include quantities and unit prices, for the parts selected on contract SPE4AX-12-D-9005. We compared the procurement history information to contract and delivery order documents obtained from EDA.

We used commercial sales data from Bell's Commercial On-Line Order Processing System, which was the system that Bell used to manage its commercial spare parts business, until February 2013, when Bell replaced it with the Business System Modernization. We selected a nonstatistical sample of 97 invoices related to commercial sales of 22 unit or total high dollar parts, or both, and obtained the invoices from Bell. We compared the invoices obtained from Bell to the Commercial On-Line Order Processing System information. As a result of our analysis, we determined that the data were sufficiently reliable for the purposes of this report.

We used Government sales data from Bell's Military Order Processing System and Commercial On-Line Order Processing System. Bell managed the Government parts through these systems until February 2013, when the system was replaced with the Business System Modernization. We selected a nonstatistical sample of 120 Government orders with high quantities for 41 parts and obtained the orders from EDA. We compared the orders obtained from EDA to Bell's Government sales data. As a result of our analysis, we determined that the data were sufficiently reliable for the purposes of this report.

Use of Technical Assistance

We consulted with the DoD Office of Inspector General Quantitative Methods Division in determining the statistical and nonstatistical audit samples.

Prior Coverage

During the last 5 years, the DoD Inspector General (DoD IG) has issued six reports discussing topics related to the purchasing of sole-source commercial spare parts at fair and reasonable prices. Unrestricted DoD IG reports can be accessed at <http://www.dodig.mil/pubs/index.cfm>.

DoD IG

Report No. DODIG-2014-054, "Defense Logistics Agency Land and Maritime Paid Too Much for High Mobility Multipurpose Wheeled Vehicle Repair Parts," April 4, 2014 (FOUO)

Report No. DODIG-2014-038, "Air Force Life Cycle Management Center Could Not Identify Actual Cost of F119 Engine Spare Parts Purchased From Pratt and Whitney," February 10, 2014 (FOUO)

Report No. DODIG-2014-020, "U.S. Army Contracting Command Did Not Obtain Fair and Reasonable Prices for Communications Equipment," December 5, 2013 (FOUO)

Report No. D-2013-090, "Improved Guidance Needed to Obtain Fair and Reasonable Prices for Sole-Source Spare Parts Procured by DLA from the Boeing Company," June 7, 2013 (FOUO)

Report No. D-2011-104, "Pricing and Escalation Issues Weaken the Effectiveness of the Army Contract with Sikorsky to Support the Corpus Christi Army Depot," September 8, 2011 (FOUO)

Report No. D-2011-061, "Excess Inventory and Contract Pricing Problems Jeopardize the Army Contract with Boeing to Support the Corpus Christi Army Depot," May 3, 2011 (FOUO)

Appendix B %

DoD IG Analysis of Sole-Source Commercial Parts Reviewed

Table 1. Price Analysis for 84 Parts

NSN	Prior Acquisition		Weighted Average Bell Unit Price	Percent Difference*
	Order Date	Unit Price		
5315-01-185-8917	5/31/2009	(b) (4)		852.5%
1615-01-185-3082	2/14/2008			693.0%
3120-01-185-3171	5/22/2009			628.0%
5365-01-185-3084	4/11/2007			519.0%
5310-01-286-6083	3/27/2008			457.6%
1560-00-966-6108	3/29/2008			269.5%
1560-00-450-6861	12/19/2005			266.1%
5340-00-372-8629	3/28/2008			248.4%
1615-00-521-5247	5/5/2009			244.9%
1560-00-125-4035	12/15/2007			244.0%
3110-01-164-8249	5/17/2009			235.7%
1615-01-256-8190	4/20/2007			218.8%
1650-01-302-0124	8/30/2006			218.7%
3130-00-649-8227	3/28/2008			195.9%
3010-00-527-4098	3/5/2007			154.0%
5315-00-132-1482	5/31/2009			146.2%
1615-01-185-6221	3/30/2008			139.2%
3040-01-252-7689	4/1/2008			113.4%
3130-01-185-9261	5/24/2009			110.3%
5330-00-518-9456	3/27/2008			106.1%
3040-01-242-9883	3/25/2008			105.7%
3040-00-078-8698	5/30/2009			100.7%
1615-01-164-8093	5/24/2009			98.3%
1560-00-489-7598	2/14/2008			97.0%
5365-01-192-4941	5/10/2009	94.6%		
1650-01-302-0123	12/9/2008	93.6%		
3040-01-333-8338	5/31/2007	88.9%		

NSN	Prior Acquisition			Weighted Average Bell Unit Price	Percent Difference*
	Order Date	Unit Price	Inflated Unit Price		
5330-01-185-8860	5/31/2009				86.8%
5310-01-299-7762	3/19/2008				84.3%
5306-00-131-7305	5/28/2009				83.1%
3040-00-157-5087	11/21/2006				76.3%
1680-01-475-6535	4/2/2007				71.3%
1615-01-198-2293	6/6/2007				69.5%
4330-01-302-2115	4/7/2009				69.3%
3040-01-164-8436	5/30/2003				65.5%
1615-01-192-4915	3/17/2008				65.3%
1615-00-527-4722	5/12/2008				64.0%
3130-01-306-8475	2/5/2007				60.3%
1615-01-185-3075	2/2/2006				59.5%
1615-01-046-2298	3/23/2008				56.6%
3110-00-691-2157	12/3/2004				50.6%
3040-01-164-8437	6/28/2007				45.2%
3020-00-529-1327	11/4/2003				43.8%
1560-01-041-7058	2/9/2009				43.1%
1615-01-185-3096	5/5/2009				42.2%
1560-00-439-3712	3/5/2007				40.0%
1615-01-256-8198	4/8/2008				39.6%
1615-00-527-4724	5/12/2008				39.4%
1560-00-891-3140	3/8/2008				39.0%
1560-01-519-6539	3/21/2008				38.8%
5330-01-428-2432	5/26/2007				33.0%
1560-00-096-2435	5/2/2009				32.9%
3010-00-527-4093	3/8/2008				32.9%
1615-01-150-6546	5/17/2007				29.3%
2935-01-256-7581	3/11/2008				26.7%
1615-01-270-2981	3/20/2008				26.2%
1560-00-191-2535	4/17/2009				24.0%
1615-01-256-7539	3/28/2008				23.0%
5310-01-283-0238	7/26/2007				20.5%

NSN	Prior Acquisition			Weighted Average Bell Unit Price	Percent Difference*
	Order Date	Unit Price	Inflated Unit Price		
1615-00-439-5599	2/26/2008	(b) (4)			20.0%
3110-00-716-8570	3/27/2008				19.3%
3020-00-461-1750	12/29/2007				17.9%
3020-00-460-3280	6/5/2003				17.5%
1615-01-149-2017	6/26/2008				14.6%
1615-01-039-3651	5/1/2004				14.5%
1560-00-176-1038	3/24/2010				14.0%
1615-00-524-3626	4/8/2009				12.8%
1615-00-240-6467	8/18/2006				12.4%
3020-01-334-1151	12/5/2005				10.3%
3040-01-046-8302	5/4/2009				9.6%
3020-01-333-2955	12/30/2008				8.6%
1680-01-475-6527	9/8/2008				8.3%
1615-01-184-6135	3/21/2007				7.6%
3010-00-530-6670	3/5/2008				7.0%
1615-01-184-1754	1/4/2008				6.8%
3040-01-164-6780	11/27/2007				5.8%
3020-01-347-9379	3/11/2008				5.4%
1615-00-235-5492	11/19/2007				4.6%
5315-00-548-2465	5/27/2009				2.6%
1615-01-287-0116	5/19/2009		1.3%		
5306-01-286-0940	12/23/2008		0.8%		
1560-01-179-7469	11/20/2007		(0.3%)		
3040-01-333-8337	2/13/2007		(3.9%)		
1615-00-240-6465	5/9/2007		(8.6%)		

* There are rounding inconsistencies in the percent differences due to rounding the inflated unit prices and weighted average Bell unit prices.

(FOUO) Table 2. Sales Analysis for 42 Parts \$

NSN	Sales (2008 - 2010)		Percent Difference	
	Commercial Quantity	Government Quantity	Commercial	Government
3020-00-529-1327	(b) (4)	0	(b) (4)	
1615-01-256-8190		31		
1650-01-302-0123		12		
1650-01-302-0124		8		
1560-00-450-6861		103		
1615-00-521-5247		82		
3010-00-527-4098		68		
1615-01-198-2293		278		
5365-01-185-3084		1,754		
5340-00-372-8629		757		
3040-00-078-8698		191		
3040-01-164-8436		230		
4330-01-302-2115		138		
5330-00-518-9456		310		
3120-01-185-3171		268		
5310-01-286-6083		904		
5310-01-299-7762		270		
1615-01-192-4915		406		
1560-00-489-7598		26		
1615-01-185-6221		1,505		
1560-01-041-7058		135		
3130-00-649-8227		1,313		
1615-01-185-3082		222		
5330-01-185-8860		1,451		
1615-01-164-8093		759		
3040-01-242-9883		656		
5365-01-192-4941		4,995		
3040-01-252-7689		234		
5306-00-131-7305		189		
1560-00-966-6108		272		
3130-01-185-9261		2,107		

NSN	Sales (2008 - 2010)		Percent Difference	
	Commercial Quantity	Government Quantity	Commercial	Government
3110-01-164-8249	(b) (4)	257	(b) (4)	
5315-01-185-8917		1,055		
1615-01-256-8198		297		
3040-00-157-5087		201		
5315-00-132-1482		1,534		
3040-01-164-8437		91		
3040-01-333-8338		8		
1560-00-125-4035		106		
1680-01-475-6535		6		
1615-00-240-6465		12		
3040-01-333-8337		3		

~~(FOUO)~~ Table 3. Cost Analysis for 35 Parts \$

NSN	Contract SPE4AX-12-D-9005			DoD IG Calculated Fair and Reasonable Price		Overpayment/Underpayment	
	Qty ¹	Weighted Average Unit Price ²	Total Price	Weighted Average Unit Price ³	Total Price ⁴	Amount ⁵	Percent ⁵
3020-00-529-1327	19	(b) (4)					1,725.2%
3010-00-527-4098	80						1,598.0%
5315-01-185-8917	412						1,264.2%
3120-01-185-3171	669						1,049.1%
5365-01-185-3084	1,065						818.4%
1560-00-450-6861	116						774.5%
1615-01-185-3082	304						471.6%
4330-01-302-2115	87						402.9%
1615-01-256-8190	30						400.1%
1615-01-185-6221	936						397.6%
3040-01-164-8436	49						379.6%
5365-01-192-4941	3,651						300.0%
3130-01-185-9261	946						260.5%
3110-01-164-8249	244						255.9%
1560-00-966-6108	152						245.9%
3040-01-252-7689	116						241.7%
5340-00-372-8629	733						215.8%
1615-00-521-5247	309						213.5%
5306-00-131-7305	581						209.5%
3130-00-649-8227	1,290						188.3%
5330-01-185-8860	1,662						181.0%

NSN	Contract SPE4AX-12-D-9005			DoD IG Calculated Fair and Reasonable Price		Overpayment/Underpayment	
	Qty ¹	Weighted Average Unit Price ²	Total Price	Weighted Average Unit Price ³	Total Price ⁴	Amount ⁵	Percent ⁵
1615-01-164-8093	364	(b) (4)					160.5%
1615-01-192-4915	191	(b) (4)					160.3%
1615-01-256-8198	213	(b) (4)					154.2%
3040-00-157-5087	143	(b) (4)					149.4%
5310-01-286-6083	1,835	(b) (4)					137.6%
3040-01-242-9883	748	(b) (4)					133.7%
1615-01-198-2293	178	(b) (4)					130.9%
5330-00-518-9456	395	(b) (4)					100.9%
3040-00-078-8698	137	(b) (4)					73.7%
1560-01-041-7058	176	(b) (4)					66.4%
5310-01-299-7762	360	(b) (4)					33.1%
1560-00-489-7598	25	(b) (4)					27.1%
Total Overpayment⁶							
1650-01-302-0123	19	(b) (4)					(29.9%)
1650-01-302-0124	15	(b) (4)					(1.4%)
Total Underpayment							

¹ The quantity represents DLA purchases as of January 15, 2014.

² The contract weighted average unit price represents total price divided by quantity.

³ The DoD IG calculated fair and reasonable unit price was calculated using Bell's direct costs, provided under the DoD IG subpoena, and applying forward pricing rates, material burden rates, and profit to reach a year 1 price. The (b) (4) escalation agreed to in the contract was applied to reach the year 2 and year 3 prices.

⁴ The DoD IG calculated fair and reasonable total price represents weighted average unit price multiplied by the contract purchased quantity.

⁵ Figures in parentheses represent negative values.

⁶ Totals do not add due to rounding.

Management Comments %

Defense Pricing



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

MAY 30 2014

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

THROUGH: DIRECTOR, ACQUISITION RESOURCES AND ANALYSIS *NS 5/30/14*

SUBJECT: Response to DoD OIG Draft Report on Defense Logistics Agency Aviation Potentially Overpaid Bell Helicopter for Sole-Source Commercial Spare Parts (Project No. D2013-D000CH-0151.000)

As requested, I am providing responses to the general content and recommendations contained in the subject report.

Recommendation 2: We recommend that the Director, Defense Pricing, issue guidance to establish a percentage of commercial sales that is sufficient to determine fair and reasonable prices when items are being acquired on a sole-source contract and market-based prices are used. The guidance should also require contracting officers to request "information other than cost or pricing data," to include cost data, if sales data are not sufficient.


Response:

Concur. The Department is working on additional guidance regarding commercial items that would advise the DoD contracting officer to require evidence that the ratio of commercial to government sales supports the conclusion that this is a commercial item and not one dominated by government procurement.

DFARS PGI 215.404-1 guidance, revised in November 2013, addresses methods for the contracting officer to use when faced with resistance, but it is insufficient when the contractor repeatedly refuses to provide the contracting officer with data other than certified cost or pricing data. The DoD IG draft report notes that the DoDIG auditors were required to subpoena data from Bell Helicopter.

I have developed two means to support contracting officers in such situations: Pricing Centers of Excellence, and the Contract Business Analysis Repository Information (CBAR) database. Both methods are designed to supplement and improve the pricing skills of the acquisition workforce. The Pricing Centers of Excellence provide a critical mass of pricing experts available to advise, assist, and mentor contracting officers to utilize alternate techniques and tools in such situations. CBAR, initiated in April 2013, is a closely-controlled database of pricing information to provide data to acquire supplies and services at the best value.

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

MAY 23 2014

MEMORANDUM FOR THE DEPARTMENT OF DEFENSE INSPECTOR GENERAL

SUBJECT: Response to DoD IG Draft Report, "Defense Logistics Agency Aviation Potentially Overpaid Bell Helicopter for Sole-Source Commercial Spare Parts" (Project No. D2013-D000CH-0151.000)

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.

DLA followed current Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) guidance in procuring sole-source commercial spare parts from Bell Helicopter. DLA takes its responsibility seriously to obtain fair and reasonable prices. To accomplish this, DLA obtained sales data on commercial items and, when appropriate, requested non-certified cost data. Bell has steadfastly refused to provide cost data to DLA where Bell's offered prices are based on commercial sales prices. The DoD IG auditors were able to obtain this cost data only after it issued a subpoena to Bell. DLA performed price analysis on Bell's sales data and successfully negotiated a ^{(b) (4)} off Bell's commercial price list. The current contract requires a further reduction in DLA's price if a commercial customer is charged a lower price for the same item. DLA complied with applicable pricing principles and guidance in the FAR and DFARS in determining the prices fair and reasonable.

The point of contact for this audit is [REDACTED], DLA Office of the Inspector General, [REDACTED]

MATTHEW R. BEEBE
Director, DLA Acquisition

Attachment:
As stated

Defense Logistics Agency (cont'd)

Recommendation 2 a: We recommend that the Director, Defense Logistics Agency (DLA) establish a quality assurance process that reviews whether the contracting officer verifies and documents that sufficient analysis was performed to determine that the previous prices paid were fair and reasonable when conducting price analysis and using historical prices paid, in accordance with DFARS, Procedures, Guidance, and Information 215.403-3(4).

Response: Concur. Since the award of contract SPRPA1-12-D-007W (later SPE4AX-12-D-9005) in February 2012, DLA has instituted a number of improvements to our process in line with the intent of this recommendation. Standard Procurement Letter (PROCLTR) 2014-61 was issued in February 2014 and included adjustments to the required Price Negotiation Memorandum (PNM) checklist. Checklist section 5, Negotiation Summary, requires that the Contracting Officer document such things as an explanation of the price analysis performed, the basis or estimating technique used to determine price reasonableness, an explanation of any price analysis performed by cost element, and the submission of data other than cost or pricing data necessary to determine a reasonable price. The PNM and checklist are both available for review to the Contracting Officer for any future procurements, providing a documented basis for determining previous prices paid to have been fair and reasonable. This PROCLTR was incorporated into the Defense Logistics Acquisition Directive Revision 5 in April 2014 and, along with the FAR and DFARS, is standard guidance followed and adhered to by DLA contracting officers.

Recommendation 2.b (1): Require the DLA Aviation contracting officer to establish pricing for the 2-year extension for contract SPE4AX-12-D-9005 and future sole-source contracts for commercial parts by performing an adequate review of historical prices, sales information, and requesting "information other than cost or pricing data," to include cost information, when commercial sales are not sufficient for determining fair and reasonable prices for sole-source commercial parts.

Response: Partially-concur. DLA will establish pricing for the 2-year extension for contract SPE4AX-12-D-9005 and future sole source contracts in accordance with current Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) guidance. DLA has and will continue to request information other than cost or pricing data when appropriate. In particular, DLA will continue to request Bell commercial sales pricing to review percentage of Government and commercial sales as well as to verify DLA is receiving a discount off the commercial price list. Bell has, however, consistently refused to provide cost data for commercial items; without Bell voluntarily providing cost data, DLA will therefore not have the ability to obtain cost information. The DoD IG auditors were only able to obtain cost data to perform a cost analysis by use of their subpoena power, which DLA does not possess.

Without the ability to obtain cost data, price analysis is the only methodology available to determine fair and reasonable prices, and is the preferred, primary method for establishing price reasonableness when certified cost or pricing data is not required (see FAR 15.403-3(a)(1)(ii) and DFARS Procedures, Guidance, and Information (PGI) 215.403-3, which emphasizes price analysis of commercial sales pricing).

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Bell changed its pricing methodology in 2008 from dual-track Government/commercial pricing to a commercial market driven pricing approach for these parts. Comparing prices paid before 2008, when Bell was using the dual track pricing methodology for Government and commercial pricing, is not a valid comparison (see FAR 15.404-1(b)(2)(ii)(A)).

DLA will request assistance from the cognizant Defense Contract Management Agency (DCMA) office to perform analysis of Bell's sales data. This data will be used to verify prices paid by Bell's commercial customers and standard price analysis techniques will be used in analyzing those prices. DLA will follow the procedures in DFARS PGI 215.404-1(a) if additional data, such as cost data, is needed to determine price reasonableness.

Recommendation 2.b(2): Assess and implement available options to recover from Bell Helicopter Textron the about \$9 million in excess payments on contract SPE4AX-12-D-9005, including voluntary refunds, in accordance with DFARS Subpart 242.71.

Response: Non-concur. DLA procured the items under current commercial contracting procedures and pricing methodology and obtained prices ^{(b) (4)} than commercial pricing for the same items. The prices on this contract are fair and reasonable in accordance with current FAR and DFARS commercial item pricing guidance. Further, the contract contains a clause which requires a further reduction in DLA's price when or if a commercial customer is charged a lower price for the same item.

Recommendation 2.b(3): Perform a sales analysis, and if necessary a cost analysis, on the remaining sole-source commercial spare parts on contract SPE4AX-12-D-9005 and request a voluntary refund from Bell Helicopter Textron for any identified overpayments, in accordance with Defense Federal Acquisition Regulation Supplement Subpart 242.71.

Response: Partially-concur. DLA completed a sales analysis of all the NSNs procured on this contract. The analysis was based on sales information provided by Bell. The DLA contracting officer, with assistance from the Integrated Support Team technical team, performed a sales analysis on 312 of the 1153 NSNs that were awarded on contract SPE4AX-12-D-9005. The analysis was performed on the 312 that were offered on Bell's commercial price list for the first time. For the remaining 1153 NSNs awarded, the contracting officer relied on the sales analysis that was performed by the contracting officer on the prior contract, SPMAX-11-D-9407. The sales analysis for both contracts was used to: 1) obtain the percentage of sales to the government and to commercial customers; and 2) verify that the prices offered by Bell under contract -9005 were discounted off Bell's commercial catalog prices. DLA asked DCMA to verify the discount was applied to the commercial catalog price, and they did so by comparing the offered price to the catalog price. DCMA confirmed this in its audit report dated September 1, 2011. This report was provided to the IG on May 20, 2013. DLA's and DCMA's analysis confirmed that DLA received a ^{(b) (4)} off Bell's commercial pricing, and met the requirements of DFARS PGI 215.404-1(b). In accordance with FAR 15.404-1(b), DLA compared the proposed prices to historical prices (the previous price paid by the Government) as noted in the PNM. The prior prices were a valid basis for comparison as there was no significant time lapse between the last

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acquisition and the present one, the terms and conditions of the acquisition were not significantly different, and the Government received the noted significant discount to the commercial catalog price. With regard to the comparability of commercial quantities to those under the DLA contracts, quantities sold to the commercial market vary in comparison to Government sales dependent upon the item in question. However, Bell prices are not dependent on quantity and do not change based on the quantity ordered. DLA provided the sales data to the DoD IG auditors.

With respect to performing cost analysis on commercial items, Bell has refused to provide non-certified cost data to DLA after repeated requests since 2008. Bell notified DLA, US Army Aviation & Missile Command, Navy Inventory Control Point, and the Defense Contract Management Agency that it was discontinuing pricing 4,000 NSNs using “cost or pricing data” and would offer these items for sale “based on market prices with discounts being applied.” Since that time, Bell has steadfastly refused to provide cost data on commercial items citing both FAR 15.404-1(b) and Public Law 112-239, Section 831 as the basis of its inapplicability.

As noted in Appendix A of the Draft Report, Bell would not provide cost data on commercial items when they met with the DoD IG in August 2013. Bell provided documents only after the DoD IG issued a subpoena to Bell General Counsel on September 19, 2013. DLA does not have subpoena power to obtain cost data from Bell and therefore is unable to comply with the portion of the Recommendation to require non-certified cost data and use that to perform cost analysis.

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Acronyms and Abbreviations %

- DFARS** Defense Federal Acquisition Regulation Supplement
- DLA** Defense Logistics Agency
- EDA** Electronic Document Access
- NSN** National Stock Number
- PGI** Procedures, Guidance, and Information

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