



ACQUISITION
AND SUSTAINMENT

THE UNDER SECRETARY OF DEFENSE
3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

JAN 31 2023

The Honorable Jack Reed
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Senate Report 116-48, page 223, accompanying S. 1790, the National Defense Authorization Act for FY 2020, requests the Under Secretary of Defense for Acquisition and Sustainment submit an annual report detailing instances where potential contractors denied requests by the Department of Defense to provide contracting officers with requested uncertified cost or pricing data to allow for the determination of fair and reasonable pricing for acquisitions.

Enclosed is the Department's third report to Congress covering FY 2022 for the period from October 1, 2021 through September 30, 2022. The Department expects to submit the next report for the period from October 1, 2022 through September 30, 2023 by the end of January 2024.

I am sending identical letters to the other congressional defense committees.

Sincerely,

A handwritten signature in black ink that reads "William A. LaPlante".

William A. LaPlante

Enclosure:
As stated

cc:
Ranking Member

Annual Report to Congress on Denials of Contracting Officer Uncertified Cost or Pricing Data Requests

October 2021 - September 2022



Office of the Under Secretary of Defense for
Acquisition and Sustainment

January 2023

The estimated cost of this report or study for the Department of Defense
is approximately \$35,000 in DoD labor in Fiscal Years 2022 - 2023.
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Background

Senate Report 116-48, page 223, accompanying S. 1790, the National Defense Authorization Act (NDAA) for FY 2020 (Public Law 116-92), requests the Under Secretary of Defense for Acquisition and Sustainment submit an annual report to the congressional defense committees detailing instances where potential contractors denied multiple requests by the Department of Defense (DoD) to provide contracting officers with requested uncertified cost or pricing data to determine fair and reasonable prices. This report reflects data collected and reported during the period October 1, 2021 through September 30, 2022. This is the third report submitted to the congressional defense committees under this reporting requirement.

Reporting Requirement

The Federal Acquisition Regulations (FAR) require contracting officers purchase supplies and services from responsible sources at fair and reasonable prices. When pricing is not set by law or regulation or when contracting officers are unable to establish a fair and reasonable price on the basis of adequate price competition, catalog or market pricing, sales to nongovernmental and governmental agencies, or data obtained from sources other than the offeror, then the contracting officer must seek uncertified cost or pricing data from the offeror. Statute (10 U.S.C. 3705) and acquisition regulations (FAR 15.402) stipulate that when obtaining data from the offeror is necessary, the offeror shall be required to submit data sufficient for the contracting officer to determine a fair and reasonable price. If an offeror does not provide this information, the contracting officer, in accordance Defense FAR Supplement (DFARS) Procedures, Guidance, and Information (PGI) 215.404-1(a)(i)(A), is required to elevate the issue to the Head of the Contracting Activity (HCA). If the offeror still refuses to provide the data, the offeror becomes ineligible for award. An award can then only be made to such a contractor upon the determination by the HCA that it is in the best interest of the government to do so, based on the specific criteria in DFARS 215 403-3(a)(4).

The Department recently made changes to DFARS PGI regarding the decision to make an award to an offeror that refuses to provide data. Specifically, the Department maintained the elevation procedures in DFARS PGI 215.404-1(a)(i)(A), but incorporated language in DFARS PGI 215.403-3 (7) to allow the HCA to delegate the authority to make the decision to award the contract in spite of the data denial, to no lower than a level above the contracting officer. The Department instituted this change based on feedback from military departments and the DoD Pricing Cadre of Experts.

When data denials result in an HCA, or HCA designee determination to award to an ineligible contractor, DoD contracting activities are responsible for reporting this information on a quarterly basis to Defense Pricing and Contracting (DPC). DPC summarizes and submits this information to the congressional defense committees on an annual basis. The reporting requirements for this annual report are set forth in DFARS PGI 215.403-3(6).

Report Elements

In this reporting period, there were a total of 401 items for which contractors denied information requested by contracting officers to determine price reasonableness and for which there was an HCA determination that it was in the best interest of the Government to make an

award without all requested information. All contractor data denials of information that followed the elevation procedures at DFARS PGI 215.404-1(a)(i)(A) and the reporting requirements at DFARS PGI 215.403-3(6) were reported by the Defense Logistics Agency (DLA).

The Department believes the problem in obtaining data from contractors to support fair and reasonable prices may be more prevalent than what has been collected to date, particularly with respect to sole source commercial products. Accordingly, as stated above, the Department revised the HCA determination to allow delegation of the decision to award, in addition to revisions to data denials reporting procedures in DFARS PGI 215.403-3(6), to streamline data collection.

FY 2022 (October 1, 2021 - September 30, 2022)

As show in Table 1, DLA encountered 401 items for which data was denied across multiple DLA contracts and divisions. All data denials reported by DLA involve items where the Original Equipment Manufacturer’s (OEM) parent company is TransDigm.

Table 1. FY22 Denials by Prime and Subcontractor/Interdivisional

Prime	Subcontractor/ Interdivisional	Original Equipment Manufacturer (OEM)	Total
AAR Supply Chain Inc.*	Leach International Corp.	Leach International Corp.**	14
Aero Fluid Products		Aero Fluid Products**	3
Aerocontrex Group Inc.		Aerocontrex Group Inc. **	11
Airborne Supply Inc.*	Breeze-Eastern LLC Mason Electric Inc.	Breeze-Eastern LLC** Mason Electric Inc.**	4 1
Allied Defense Industries LLC*	Hartwell Corp.	Hartwell Corp.**	1
Arkwin Industries Inc.		Arkwin Industries Inc.**	16
ASC International Inc.*	Wiggings Group	Wiggings Group**	2
Champion Aerospace LLC		Champion Aerospace LLC**	13
Chelton Limited		Chelton Limited**	1
Data Device Corp.		Data Device Corp.**	4
Defense Support Services Inc.*	Transdigm Inc.	Transdigm Inc.**	2
Dukes Aerospace Inc.		Dukes Aerospace Inc.**	2
Electromech Technologies LLC		Electromech Technologies LLC**	8
FBC Enterprises LLC*	Wiggings Group	Wiggings Group**	2
Good Vibes LLC*	Leach International Corp. Electromech Technologies LLC	Leach International Corp.** Electromech Technologies LLC**	7 1
H C Merchandisers Inc.*	Kirkhill Inc. Transdigm Inc. TA Aerospace Co.	Kirkhill Inc.** Transdigm Inc.** TA Aerospace Co.**	1 5 2

Hartwell Corp.		Hartwell Corp.**	18
Integrated Procurement Technologies (IPT)*	MarathonNorco Aerospace	MarathonNorco Aerospace**	1
	Symetrics Industries LLC	Symetrics Industries LLC**	6
	Adams Rite Aerospace Inc.	Adams Rite Aerospace Inc.**	2
Janco Corp.		Janco Corp.**	1
JGILS LLC*	Shield Restraints Systems Inc.	Shield Restraints Systems Inc.**	1
Kampi Components Company Inc.*	Shield Restraints Systems Inc.	Shield Restraints Systems Inc.**	2
Kellstrom Defense Aerospace Inc.*	CEF Industries LLC	CEF Industries LLC**	2
Kirkhill Inc.		Kirkhill Inc.**	17
Leach International Corp.		Leach International Corp.**	13
Lecuyer Aviation LLC*	Transdigm Inc.	Transdigm Inc.**	1
Linmarr Associates Inc.*	Tyee Aircraft Inc.	Tyee Aircraft Inc.**	24
Marathonnorco Aerospace Inc.		Marathonnorco Aerospace Inc.**	10
Marvel Aero International *	MarathonNorco Aerospace	MarathonNorco Aerospace**	4
Mason Electric Co.		Mason Electric Co. **	65
Military Supply Company LLC*	Avionic Instruments	Avionic Instruments**	1
Orkal Industries LLC*	Transdigm Inc.	Transdigm Inc.**	1
Pinnacle Research And Aviation LLC*	Transdigm Inc.	Transdigm Inc.**	1
Pneudraulics Inc.		Pneudraulics Inc.**	1
Rural Route 2 LLC*	Transdigm Inc.	Transdigm Inc.**	8
Semco Instruments Inc.*	Semco Instruments Inc.	Semco Instruments Inc.**	1
Skurka Aerospace Inc.		Skurka Aerospace Inc.**	8
Sweeney Engineering Corp.		Sweeney Engineering Corp.**	2
Tactair Fluid Controls		Tactair Fluid Controls**	1
Telair US LLC		Telair US LLC**	1
Transcoil LLC		Transcoil LLC**	4
Transfero Inc.*	Transcoil LLC	Transcoil LLC**	1
Triman Industries*	Breeze-Eastern LLC	Breeze-Eastern LLC**	21
	CMC Electronique Inc.	CMC Electronique Inc.**	1
	Korry Electronics Corp.	Korry Electronics Corp.**	26
	Not Listed	Not Listed**	18
	Whippany Actuation Systems LLC	Whippany Actuation Systems** LLC**	22
Wiggins Group		Wiggins Group**	16
Grand Total			401

*Distributor

**TransDigm is the Parent Company to the OEM

As shown in Table 2, the primary reason for contractor denials are attributed to vendor assertions that proposed items were commercial, but insufficient information was available to determine the price was reasonable in the absence of adequate price competition.

Table 2. FY22 Contractor Reasons for Denial

Basis of Denial	Number of Denials
Asserted Commerciality	361
Not responsive	7
Redacted invoice provided	1
Waiting for data	3
Request denied	29
Grand Total	401

Conclusion

Currently, statutory authority and regulatory provisions require contracting officers to obtain a determination from the HCA, or the designee of the HCA, that it is in the best interests of the Government to award a contract to a contractor who fails to provide cost or pricing data to support a price reasonableness determination for goods or services. The Department appreciates the enactment of Section 803 of the FY23 NDAA to assist contracting officers’ ability to obtain data other than certified cost or pricing data in the context of certain commercial procurements.