



United States Department of Agriculture



OFFICE OF INSPECTOR GENERAL



Audit of Forest Service's Next Generation and Legacy Airtanker Contract Awards

Audit Report 08099-0001-12

OBJECTIVE

Our objective was to determine if FS' next generation and legacy airtanker contracts were solicited, competed, and awarded according to the FAR and if contract modifications were within the scope of the original award.

REVIEWED

We reviewed all airtanker contracts awarded from fiscal year (FY) 2013 to FY 2015. Fieldwork was performed at the FS national office in Washington, D.C.; the National Interagency Fire Center in Boise, Idaho; and in Kansas City, Missouri.

RECOMMENDS

We recommended that FS reevaluate the best method for acquiring "call when needed" airtanker services, revise its reporting procedures to ensure that information entered in FPDS is correct, and implement an appropriate method for recording the estimated flight hour costs within each airtanker contract and contract modification.

OIG reviewed how FS contracts for the airtankers used to fight forest fires.

WHAT OIG FOUND

The Forest Service (FS) contracts with companies to supply the aircraft it needs to fight forest fires. The Office of Inspector General (OIG) reviewed how FS' Acquisition Management issued these contracts. We found that the contracts issued against basic ordering agreements for "call when needed" airtanker services were not being placed by the designated FS contracting officer, but were instead placed by the National Interagency Coordination Center (NICC) dispatchers who did not possess a contract warrant. Additionally, we could not determine how or whether FS properly competed the contracts because FS could not provide evidence to support the competition of the contract, or that the contract files contained the appropriate documentation as required by the Federal Acquisition Regulation (FAR). With NICC dispatchers issuing contracts against these agreements, unwarranted individuals bound the government to the contracts and could have authorized the contractor to operate outside the bounds of the contract.

We also found that FS entered incorrect data into the Federal Procurement Data System (FPDS). Specifically, FS entered the actual amounts paid to the vendors into FPDS, rather than the amounts obligated by the contract action as required. As a result, Congress and Executive Branch agencies do not have reliable FPDS obligation data concerning FS airtanker contracts.

Finally, we found that FS did not include flight rate costs in its contracts because the agency did not know the actual flight hours that would be covered by the period of the contract. As a result, FS did not establish a flight rate cost obligation to properly budget for the projected costs and is at risk of violating the Anti-Deficiency Act should the costs exceed the available funds. FS generally concurred with our findings and we accepted management decision on all of the recommendations.



United States Department of Agriculture
Office of Inspector General
Washington, D.C. 20250



DATE: July 7, 2017

AUDIT
NUMBER: 08099-0001-12

TO: Thomas Tidwell
Chief
Forest Service

ATTN: Antoine Dixon
Chief Financial Officer

FROM: Gil H. Harden
Assistant Inspector General for Audit

SUBJECT: Audit of Forest Service's Next Generation and Legacy Airtanker Contract Awards

This report represents the results of the subject audit. Your written response, dated May 4, 2017, is included in its entirety at the end of the report. Excerpts from your response and the Office of Inspector General's position are incorporated in the relevant sections of the report. Based on your written response, we accept management decision on all recommendations, and no further response to this office is required.

In accordance with Departmental Regulation 1720-1, please note that the regulation requires final action to be taken within 1 year of each management decision to prevent being listed in the Department's annual Agency Financial Report. Please follow your internal agency procedures in forwarding final action correspondence to the Office of the Chief Financial Officer.

We appreciate the courtesies and cooperation extended to us by members of your staff during our audit fieldwork and subsequent discussions. This report contains publicly available information and will be posted in its entirety to our website (<http://www.usda.gov/oig>) in the near future.

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Background and Objectives

Background

Forest Service Airtanker History

The Forest Service (FS) uses aircraft known as airtankers to fight fires. These airtankers drop fire retardant or water to slow down a fire and aid firefighters as they work to contain the fire on the ground.



http://www.fs.fed.us/fire/av_safety/index.html

Airtanker applying fire retardant.

In 2012, FS determined that a modern FS airtanker fleet is critical to combating the increasing number of wildfires occurring in the United States. Specifically, FS recognized that:

With the changing climate, fire seasons will likely become longer and more severe. This has already started to occur with the Western fire season now, on average, 78 days longer than in the mid-1980s. The trend for the number of acres burned annually by wildfires indicates a doubling of acres burned since 1960. Cumulative drought, extensive insect kill in western forests, and regional shifts of population into the wildland urban interface have resulted in an increased level of wildfire activity that is expected to continue into the future.¹

¹ USDA FS, *Large Airtanker Modernization Strategy* (Feb. 2012) analyzes the options for next generation large airtankers and includes recommendations to the FS and Department of Interior.

Approximately 5.3 million acres of land have burned as a result of wildfires during calendar year 2016, according to the National Interagency Fire Center as of December 2016.² The changes in the fire season and increased pressure from additional populated areas are likely to result in more demand for firefighting response from the Federal Government.³

Even though the number and frequency of wildfires has grown, the aircraft FS uses to combat wildfires dwindled in number and became obsolete, thus reducing the number of available aircraft. Between 2000 and 2011, the size of FS' airtanker fleet shrank from 43 operational aircraft to 11. This rapidly aging fleet will not be able to comply with airworthiness and safety requirements indefinitely, and FS cannot rely on this aging fleet in the future.⁴

OIG released an audit report in July 2009 on *Forest Service's Replacement Plan for Firefighting Aerial Resources*.⁵ In that report, OIG recommended that FS establish a team to plan and procure new firefighting aircraft. As part of that effort, FS agreed to adopt goals and performance measures to include in the agency's aviation strategic plan. In August 2013, the Government Accountability Office (GAO) released an additional audit report that recommended FS and the Department of the Interior obtain data on the effectiveness of various types of firefighting aircraft before identifying how best to expand the fleet.⁶ In response to the OIG audit, FS developed the 2012 Large Airtanker Modernization Strategy. This strategy identified the need for an airtanker (referred to as the "next generation" airtanker) that would have advanced capabilities compared to the legacy airtankers currently in operation. Advanced capabilities for the next generation airtanker include: (1) aircraft equipped with turbine engines; (2) aircraft able to cruise at speeds equal to or greater than 300 knots; and (3) aircraft able to carry a minimum capacity of 2,000 gallons of retardant.^{7, 8}

For airtanker contracts awarded between fiscal year (FY) 2013 and FY 2015, a total of five solicitations were issued for airtanker services. Multiple awards were made from those solicitations; specifically, 10 contracts were awarded and 7 basic ordering agreements were established. The dollar value of all the contracts and basic ordering agreements we reviewed totaled \$426.5 million. FS awarded the first next generation airtanker contract in May 2013. After the award of the initial next generation contract, an airtanker vendor filed a contract protest because it was not awarded a next generation contract. The vendor subsequently dropped the

² National Interagency Fire Center, *National Preparedness Daily Report* for calendar year 2016, <https://www.nifc.gov/fireInfo/nfn.htm> (last visited on Dec. 7, 2016).

³ An FS report shows the continued expansion of housing development near forests—an area referred to as the Wildland-Urban Interface. Increasing densities of people and infrastructure in such areas make wildfire management more complex and require more firefighting assets to ensure an appropriate, safe, and effective response, which in turn drives up the cost of fighting wildfires. *The 2010 wildland-urban interface of the conterminous United States* (June 2015).

⁴ USDA FS, *Large Airtanker Modernization Strategy* (Feb. 2012).

⁵ Audit Report 08601-53-SF, *Forest Service's Replacement Plan for Firefighting Aerial Resources*, July 2009.

⁶ Audit Report GAO-13-684, *Wildland Fire Management, Improvements Needed in Information, Collaboration, and Planning to Enhance Federal Fire Aviation Program Success*, Aug. 2013.

⁷ USDA FS, *Large Airtanker Modernization Strategy* (Feb. 2012).

⁸ Aerially-applied fire retardant and other fire chemicals reduces wildfire intensity and rate of spread, decreases risks to firefighters, and enables them to construct a fireline safely. In many situations, the use of aerially-applied retardant in concert with firefighters on the ground allows FS to safely meet its responsibilities to protect landscapes, resources, and people.

protest after FS provided the legacy airtanker vendor with a new sole-source award for next generation airtankers. The sole-source award was eventually deemed unjustified by GAO, which sustained the protest lodged by multiple next generation airtanker aviation companies.⁹ GAO highlighted multiple questionable contracting practices and Federal Acquisition Regulation (FAR) violations by FS.^{10, 11}

Federal Procurements

To issue a contract, an agency must first identify a need. Once a need is identified, the agency program office submits a requisition for purchase to the appropriate contracting office. The contracting office, working in conjunction with the requisite program office prepares the solicitation for announcement. Prior to posting the solicitation, the agency notifies contractors that may be interested in the procurement. To announce a procurement need, the agency publicizes the solicitation in order to give the public notice. After the public has been notified for a designated number of days, the solicitation is also posted to a public forum, generally the Federal Business Opportunities website.¹² The solicitation is a request from the agency for vendors to submit offers or quotations pertaining to a specific contract announcement to the Government, or in this case, to FS.

The FS Large Airtanker Modernization Strategy identified that FS had a need to procure a next generation type of aircraft. FS subsequently issued solicitations containing the specifications for the aircraft. FS then evaluated the proposals received and awarded contracts after evaluating the factors outlined in the solicitation. Contracting officers are issued warrants that legally authorize the contracting officers to bind the Government by awarding contracts.¹³ After any award is made, changes to the terms of the contract are documented via contract modification.

In addition to the airtanker contracts awarded, FS issued basic ordering agreements for airtankers referred to as “call when needed.” The FAR defines a basic ordering agreement as a written instrument of understanding, negotiated between an agency, contracting activity, or contracting office and a contractor.¹⁴ The understanding contains terms and clauses that apply to future contracts, which can also be known as orders:¹⁵ between the parties; a description of the supplies and services to be provided; and methods for pricing, issuing, and delivering the orders to the agency under the agreement.

FS refers to these agreements as “call when needed” because the basic ordering agreements enable FS to contact a vendor to deploy an airtanker under a contract quickly, when needed.

⁹ GAO Decision B-409356.2; B-409356.3; B-409356.4; B-409356.5; B-409356.6, *Matter of Coulson Aviation (USA) Inc.; 10 Tanker Air Carrier, LLC; Minden Air Corp* (Mar. 31, 2014).

¹⁰ The FAR is the primary regulation for use by all Federal Executive Branch agencies in their acquisition of supplies and services with appropriated funds.

¹¹ GAO concluded for example that the sole-source award to the vendor was promised in exchange for the vendor’s withdrawal of an earlier protest, and that there was not a reasonable basis for the agency’s [FS] actions.

¹² The Federal Business Opportunities website is located at www.fbo.gov.

¹³ Employees with delegated warrant authority are the only individuals legally authorized to bind the Government by executing contracts and signing determinations and findings required by the FAR.

¹⁴ 48 Code of Federal Regulations (C.F.R.) § 16.703 (Sept. 3, 2015).

¹⁵ For the purposes of finding one, the term order(s) is synonymous with the term contract(s).

However, the “call when needed” airtanker agreements are not guaranteed contracts; contracts based on the agreements are only awarded in the event FS needs additional airtanker resources during the season and the vendor has aircraft available.¹⁶

A basic ordering agreement may be used to expedite contracting for supplies or services when specific items, quantities, and prices are not known at the time the agreement is executed, but a substantial number of requirements for the type of supplies or services covered by the agreement are anticipated to be purchased from the contractor. Orders placed under the basic ordering agreement become a binding contract at a point specified in the basic ordering agreement (e.g., issuance of the order, acceptance of the order in a specified manner, or failure to reject the order within a specified number of days).¹⁷ Furthermore, a contracting officer is the individual responsible for issuing orders for the required supplies or services covered by the agreement.¹⁸

After contracts are awarded, the FAR requires Executive Branch agencies to use the Federal Procurement Data System (FPDS) to maintain publicly available information about all unclassified contract actions exceeding the micro-purchase threshold¹⁹ and any modifications to those actions that change previously reported contract action data, regardless of dollar value.²⁰ FPDS contains data from all Government agencies. Congress and Executive Branch agencies use FPDS’ reporting capabilities to track small business goals, report the number and amounts of contracts to date, show geographical placement of contracts, and summarize data for a specific contractor.

Objectives

Our objective was to determine if FS’ next generation and legacy airtanker contracts were solicited, competed, and awarded according to the FAR and if contract modifications were within the scope of the original award.

Based on the evidence obtained during the course of this audit, we identified minor, non-reportable issues with the legacy and next generation contract file documentation and determined that FS’ next generation and legacy airtanker contracts were generally solicited according to the FAR and that contract modifications were within the scope of the original awards.

¹⁶ A basic ordering agreement shall not state or imply any agreement by the Government to place future contracts or orders with the contractor or be used in any manner to restrict competition. 48 C.F.R § 16.703(c) (Sept. 3, 2015).

¹⁷ 48 C.F.R § 16.703(b) (Sept. 3, 2015).

¹⁸ 48 C.F.R § 16.703(d) (Sept. 3, 2015).

¹⁹ The Micro-purchase threshold is an acquisition of supplies or services using simplified acquisition procedures in which the aggregate amount does not exceed \$3,000.

²⁰ FAR Sections 4.603(a), 4.606(a); The Federal Funding Accountability and Transparency Act of 2006, Pub. L. No. 109-282 (2006), requires that all unclassified Federal award data must be publicly accessible.

Section 1: Compliance with Contracting Regulations and Departmental Policies

Finding 1: FS Should Properly Place, Compete, and Document Contracts When Using Basic Ordering Agreements for Airtanker Services

FS uses basic ordering agreements to supply aircraft services on a “call when needed” basis. These agreements are not guaranteed contracts and are only awarded in the event FS needs additional airtanker resources and the vendor has aircraft available. Evidence obtained from the contract files showed that the designated FS contracting officer was not issuing these contracts.²¹ Instead, the National Interagency Coordination Center (NICC) dispatchers, who did not possess contract warrants, issued them. These dispatchers are the individuals who coordinate fire response resources in the event of a forest fire. Additionally, we could not determine how or whether FS properly competed the contracts because FS could not provide evidence to support the competition of the contract or that the contract files contained the appropriate documentation as required by the FAR. FS Acquisition Management officials explained that they allowed NICC dispatchers to place the contracts because this is historically how these contracts were placed, so they followed historical precedent. As a result, unwarranted NICC dispatchers were issuing contracts, binding the Government to the orders, and committing Federal funding. Hence, a dispatcher could authorize a contractor to operate outside the bounds of the contract.

The FAR states that contracting officers have the authority to enter into, administer, or terminate contracts. Additionally, the contracting officer may bind the Government only to the extent of the warrant authority delegated to them.²² The FAR further states that only contracting officers shall sign contracts on behalf of the United States.²³ A USDA Office of Procurement and Property Management procurement advisory also states that the authority to enter into contractual relationships and commit the Government to the expenditure of public (taxpayer) funds is a delegated authority, which must be given in writing.^{24,25} Employees with delegated warrant authority are the only individuals legally authorized to bind the Government by executing contracts and signing determinations and findings required by the FAR. Additionally, the procurement advisory states that an unauthorized commitment occurs when contracting officers, or any other individuals, make an agreement on behalf of the Government that is not binding because the individual lacks authority to enter into the agreement.

The FAR states that a contracting officer representing any Government activity listed in a basic ordering agreement shall issue orders²⁶ for required supplies or services covered by that

²¹ Orders placed under the basic ordering agreement become a binding contract at a point specified in the basic ordering agreement. For the purposes of this finding, when the term “contract” is used, it is the point at which the order becomes binding based on the specifications outlined in the FS basic ordering agreements.

²² 48 C.F.R. § 1.602 (Sept. 3, 2015).

²³ 48 C.F.R. § 4.101 (Sept. 3, 2015).

²⁴ The Office of Procurement and Property Management serves the Secretary and USDA agencies by providing policy, advice and coordination in acquisitions and procurement and management of real and personal property.

²⁵ USDA Procurement Advisory 100D, *USDA Contracting Officers Warrant Guidelines* (Apr. 1, 2014).

²⁶ For the purposes of this finding, the term order(s) is synonymous with the term contract(s).

agreement.²⁷ It also requires that, before issuing an order under a basic ordering agreement, the contracting officer obtain competition in accordance with Part 6 of the FAR and ensure the use of a basic ordering agreement is not prejudicial to other offerors.²⁸ The contracting officer also must sign and obtain any applicable justifications and determination and findings as if the order were a contract awarded independently of a basic ordering agreement. In addition to the FAR requirements, the contracting officer must follow the methods identified in the agreement for pricing, issuing, and delivering the orders under the basic ordering agreement.

We found that an FS contracting officer did not issue the contracts for the basic ordering agreements reviewed totaling \$38.9 million of required services. Instead, dispatchers at NICC issued the contracts although they did not have warrants. NICC initiated each contract and determined which vendor should be awarded the contract. The call when needed basic ordering agreements' specifications state that NICC is the only designated coordination center with the authority to activate and release a large airtanker under this agreement. However, the FAR establishes that only contracting officers that possess sufficient warrant authority are able to sign contracts on behalf of the United States. Based on this, we concluded that designating NICC as the only center with the authority to activate and release airtankers is not sufficient to comply with the warrant and contracting requirements outlined by the FAR and USDA procurement advisories.

Additionally, we were unable to determine how or whether FS properly competed the contracts because FS could not provide any documentation to support how the contract was competed or that placement was not prejudicial to other offerors. When evaluating which vendor to award a contract to, NICC is to consider the aircraft capability, aircraft location, availability of the aircraft, and cost at the time of its activation before determining which vendor is the best value for the specific contract. According to the NICC assistant center manager, they did not maintain documentation to support how the "call when needed" airtanker service contracts were issued. Further, the contract files for each basic ordering agreement also did not contain documentation for the contracts placed against each agreement, or any supporting documentation for the basis of the award decisions, such as any applicable justifications and/or determinations and findings.

According to FS, this occurred because, historically, this is how FS has issued contracts under the "call when needed" agreements. FS officials continued to place contracts against the agreements using this method. FS also explained that it is not possible for the contracting officer to be available at all hours to issue these contracts due to the urgent nature of the fires.

Since NICC dispatchers were issuing contracts against these agreements, unwarranted individuals were making decisions reserved for contracting officers and subsequently binding the Government to contracts. Dispatchers could therefore authorize the contractor to operate outside the bounds of the contract. Furthermore, pursuant to Procurement Advisory 100D, the \$38.9 million in contracts against the basic ordering agreements that FS issued and we reviewed should be considered unauthorized commitments.²⁹

²⁷ 48 C.F.R. § 16.703 (Sept. 3, 2015).

²⁸ Part 6 of the FAR prescribes policies and procedures to promote full and open competition in the acquisition process.

²⁹ USDA Procurement Advisory 100D, *USDA Contracting Officers Warrant Guidelines* (Apr. 1, 2014).

An unauthorized commitment occurs when an individual makes an agreement on behalf of the Government that is not binding because that individual lacks the proper authority. In order to ratify such an agreement, the head of the contracting activity or his/her designee must conduct a review and make a decision to ratify the agreement.³⁰ If the head of the contracting activity or his/her designee determines that the need for the agreement was justified and the Government received a value for the amount paid, he/she can ratify the contract.³¹

Additionally, since there is no documentation supporting each contract issued against the basic ordering agreement, we could not determine that the contracts were awarded according to the terms outlined in the agreement that were designed to provide FS with the best value option.

During the agency closeout meeting, we informed FS officials of the issues we identified regarding the basic ordering agreement contracts. FS officials stated that acquiring “call when needed” aircraft services is a complex undertaking. While having contemplated other contract vehicles, FS has historically issued basic ordering agreement contracts via the dispatchers. However, Federal agencies have been held liable to vendors for contracts made by dispatchers who lacked a contracting officer’s warrant.³² Since NICC and the dispatchers issuing the contracts under these agreements did not have contracting authority, FS could be held liable in a similar situation if the dispatcher issued a contract against a basic ordering agreement that is not adequately justified. FS should seek guidance in reevaluating its use of basic ordering agreements.

Recommendation 1

Reevaluate the use of basic ordering agreements for obtaining “call when needed” airtanker services and coordinate with applicable USDA offices to determine the best method and contract vehicle for acquiring “call when needed” airtanker services and then establish procedures to operate within the bounds of the Federal Acquisition Regulations (FAR) and USDA procurement policies for the contract vehicle and method selected.

Agency Response

In its May 4, 2017, response, FS generally concurred with this audit recommendation. FS stated as part of its Transforming Incident Procurement Project (TIPP), it will follow up with USDA offices within the next year to coordinate on the review of contract vehicles for “call when needed” airtanker services. FS will make a determination of the best acquisition method, type of contract vehicle, and establish procedures to be used when TIPP recommendations are implemented. FS estimates a completion date of May 8, 2018.

³⁰ Head of the contracting activity means the official who has overall responsibility for managing the contracting activity 48 C.F.R. § Subpart 2.1 (Sept. 3, 2015).

³¹ Ratification means the act of approving an unauthorized commitment by an official who has the authority to do so.

³² Appeal of Houston Helicopters Inc., Interior Bureau of Contract Appeals No. 3196, (Jan. 31, 1996).

OIG Position

We accept FS' management decision.

Recommendation 2

Determine if the contracts placed under the basic ordering agreements should be ratified and, if so, proceed accordingly.

Agency Response

In its May 4, 2017, response, FS concurred with this audit recommendation. FS will review previous CWN Airtanker orders in accordance with the agency's ratification process.

OIG Position

We accept FS' management decision.

Finding 2: FPDS Records Must Accurately Reflect the Total Dollars Obligated or De-obligated by the Contract Action

FPDS contains data from all Government agencies. Congress, Federal departments, and agencies use FPDS' reporting capabilities to track small business goals, report the number and amounts of contracts to date, show geographical placement of contracts, and summarize data for a specific contractor. The quality of the data submitted is crucial to ensure accurate and reliable reporting. However, we determined that FS did not properly input data into FPDS as required by the FAR,³³ USDA,³⁴ and FS guidelines.³⁵ This occurred because FS input the actual amounts paid to the vendors for its FPDS entries, rather than the amounts obligated by the contract action, as required. As a result, Congress and Executive Branch agencies do not have reliable FPDS data concerning FS airtanker contracts, and FS underreported approximately \$147 million in contract actions.³⁶

The FAR, a USDA procurement advisory, and a Forest Service Handbook all require FS to use FPDS to maintain publicly available information about all unclassified contract actions exceeding the micro-purchase threshold, and any modifications to those actions that change previously reported contract action data, regardless of dollar value. More specifically, FPDS defines what data should be input per category, and it identifies that the amount recorded per contract in FPDS should be the amount obligated or de-obligated by the specific contract action.³⁷

We determined that although FS was using FPDS to record contract data for airtanker contracts as required, FS reported approximately \$147 million less in FPDS for the contracts we reviewed than was included in the contract files. The dollar amounts FS recorded in FPDS were the actual amounts paid to the vendor on a monthly basis instead of the amount obligated by the contract action. The contract awards cover 5 years, which contributed to the size of this disparity.

This occurred because FS entered the actual dollars paid to the vendors into FPDS instead of the amounts obligated or de-obligated by the specific contract action. FS officials chose this method because they believed it was more accurate since the payments made included the amounts for the actual hours flown per plane; the actual hours flown are not included in the obligated or deobligated amount of the contract action.

As a result, Congress and Executive Branch agencies do not have reliable FPDS data on FS airtanker contracts. Decision makers use FPDS data to assess the impact of Government-wide acquisition policies and processes on the system as well as the impact on specific geographical areas, markets, and socio-economic goals.

³³ 48 C.F.R. § Subpart 4.6 (Sept. 3, 2015).

³⁴ USDA Procurement Advisory 72, *FPDS-Next Generation Reporting Requirements* (Dec. 23, 2004).

³⁵ USDA FS Handbook 6309.32, *Part 4G04 Administrative Matters* (Jan. 31, 2007).

³⁶ The dollar value pertains only to contracts for the legacy and next generation air tanker contracts. The documentation provided by FS of the orders issued against the "call when needed" basic ordering agreements was not sufficient for us to compare to the FPDS data to determine any discrepancies.

³⁷ *General Service Administration FPDS-NG Data Element Dictionary*, Version 1.4 (Jan. 20, 2017).

Recommendation 3

Revise FS' reporting procedures to ensure that information reported in the Federal Procurement Data System (FPDS) accurately reflects the total dollars obligated or de-obligated by the contract action.

Agency Response

In its May 4, 2017, response, FS generally concurred with this audit recommendation. FS will review its contract action and FPDS recording procedures and revise them to allow for the most accurate recording of obligations in FPDS.

OIG Position

We accept FS' management decision.

Recommendation 4

Correct data pertaining to open airtanker contracts in FPDS to ensure it accurately reflects the total dollars obligated or de-obligated by the contract actions.

Agency Response

In its May 4, 2017, response, FS concurred with this audit recommendation. FS will review the contract obligation actions issued and correct discrepancies in obligation actions or FPDS recording.

OIG Position

We accept FS' management decision.

Section 2: Flight Rate Costs

Finding 3: FS Needs to Properly Record Flight Rate Cost Obligations via Contract Awards and Modifications

FS pays airtanker contractors based on two rates detailed in the contract: the mandatory availability period rate and the flight rate. The mandatory availability period rate is a daily rate, paid to the vendor for having its planes on standby for a set number of days per year. The flight rate is an hourly rate paid to the vendor based on the hours actually flown. We determined that FS did not include flight rate costs in the contracts or contract modifications, which are the official obligating documents.³⁸ This occurred because FS did not know the actual flight hours that would be covered by the period of each contract. Although we understand that FS would not know the actual flight hours that would be flown, Federal appropriations law requires either the maximum allowable cost or an estimated cost to be obligated.³⁹ As a result, FS did not establish a flight rate cost obligation to properly budget for the projected costs and is at risk of violating the Anti-Deficiency Act⁴⁰ should the costs exceed available funds.

The precise amount of the Federal government's liability defined at the time the government enters into the contract is the amount recorded as an obligation. For types of obligations where the precise amount of the government's liability cannot be known at the time the liability is incurred, an initial amount must still be recorded. The agency should then adjust the initial obligation amount up or down periodically as more precise information becomes available. If an estimate is used, the basis for the estimate and the computation must be documented.⁴¹

During our testing we determined that FS did not record flight rate costs in the contract or contract modifications, which are the official obligating documents. Based on the actual flight hours for all 10 contracts as of November 2016, FS improperly obligated approximately \$99.6 million in flight rate costs because FS did not record these obligation amounts in the contract or contract modifications. This occurred because FS officials stated they did not know the flight hours that would actually be incurred by the vendor. Although we understand that FS would not know the actual flight hours that would be flown, Federal appropriations law requires either the maximum allowable cost, or an estimated cost to be obligated and recorded.⁴²

³⁸ This determination does not pertain to the basic ordering agreements as the basic ordering agreement contract files did not include copies of the orders placed; therefore, we could not determine if this was also the case for the basic ordering agreements.

³⁹ 31 United States Code (U.S.C) § 1501. *See also GAO's Policy and Procedure Manual for Guidance of Federal Agencies*, Tit. 7, § 3.5(D) (May 18, 1993).

⁴⁰ 31 U.S.C. § 1341.

⁴¹ No. B-171457, 50 Comp. Gen. 589 (Feb. 25, 1971).

⁴² 31 U.S.C. § 1501. *See also GAO's Policy and Procedure Manual for Guidance of Federal Agencies*, Tit. 7, § 3.5(D) (May 18, 1993).

As a result, FS is at risk of incurring an Anti-Deficiency Act violation by not properly estimating its future obligations should the flight rate costs exceed the available funds.⁴³ Federal agencies are prohibited from making or authorizing expenditures from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation or fund unless authorized by law.

Recommendation 5

Identify and implement an appropriate method for recording the estimated flight hours for each airtanker contract, as well as a method to adjust the estimated flight hour cost obligations to match the actual expenditure for the flight hours incurred via contract modification.

Agency Response

In its May 4, 2017, response, FS concurred with this audit recommendation. FS' Acquisition Management will work with Fire and Aviation Management operations and budget staff to determine the most efficient method of estimating flight hour costs, obligating funds via a contract action for those costs in a timely manner and reconciling the actual costs via a deobligation modification.

OIG Position

We accept FS' management decision.

⁴³ FS provided evidence that demonstrated they did not exceed their appropriation, and we were able to obtain reasonable assurance that an Anti-Deficiency Act violation did not occur.

Scope and Methodology

We conducted this audit to determine if FS' next generation and legacy airtanker contracts awarded between FY 2013 and FY 2015 were solicited, competed, and awarded as prescribed in applicable portions of the FAR and to determine if contract modifications were within the scope of the original award. Fieldwork was performed from November 2015 to February 2017 at the FS national office in Washington, D.C.; the National Interagency Fire Center in Boise, Idaho; and in Kansas City, Missouri.

To properly assess the contracts, we used the FAR as criteria. In particular, we used the version of the FAR that was in effect at the time the contracts were awarded. As the FAR is updated frequently, the verbiage of the version of the FAR in effect at the time the contracts were awarded may differ from the most current version of the FAR, published at Title 48 of the C.F.R. As such, where this audit cites to an earlier version of the FAR, the date of that version of the FAR appears in parentheses at the end of the citation.

We chose our scope period based on the award of the first next generation airtanker contract and the subsequent protest that resulted in a GAO review. The GAO review highlighted multiple questionable contracting practices and FAR violations conducted by FS. As a result of this, we identified the new contracts and tested all of the airtanker service contracts awarded between FY 2013 and FY 2015. The dollar value associated with the contracts and basic ordering agreements we reviewed totaled \$426.5 million.

For this audit, our tests included the collection and review of applicable contract documentation related to the next generation and legacy airtanker contracts and modifications. Based on our initial testing, we notified FS management and expanded our fieldwork to include the "call when needed" airtanker services contracted through a basic ordering agreement. Additionally, we reviewed the contract documentation as it related to FS policies and procedures, and we conducted interviews of FS personnel. In total, we reviewed 5 solicitations, 10 contracts, and 7 basic ordering agreements (see Exhibit B).

During the course of the audit, our testing included the use of data derived from FPDS to identify the universe of potential airtanker service contracts. We did not rely on these data; instead, we used the data to identify the location of the responsible contracting office and subsequently obtained the contract source documents for all contracts within our sample directly from the contracting office. We used these source documents to conduct our testing and draw our conclusions. Additionally, we obtained data from the Financial Management Modernization Initiative system and FS Incident Business System; however, we did not rely on data from these systems as a basis for our findings.

We conducted this audit 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 the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Abbreviations

C.F.R.....	Code of Federal Regulations
FAR.....	Federal Acquisition Regulation
FPDS.....	Federal Procurement Data System
FS.....	Forest Service
FY.....	fiscal year
GAO.....	Government Accountability Office
NICC.....	National Interagency Coordination Center
OIG.....	Office of Inspector General
TIPP.....	Transforming Incident Procurement Project
U.S.C.....	United States Code
USDA.....	Department of Agriculture

Exhibit A: Summary of Monetary Results

Exhibit A summarizes the monetary results for our audit report by finding and recommendation number.

Finding	Recommendation	Description	Amount	Category
1	2	Basic Ordering Agreement Unauthorized Commitments	\$38,864,698	Questioned Costs, No Recovery Recommended
2	4	FPDS Underreporting	\$147,223,160	Other: Accounting Classification Error
3	5	Improperly Obligated Flight Rates	\$99,564,850	Other: Accounting Classification Error
Total			\$285,652,708	

Exhibit B: List of Solicitations and Contracts Reviewed⁴⁴

	Solicitations	Solicitation ID	Date
1	Legacy ⁴⁵	AG-024B-S-12-9026	11/13/2012
2	Next Generation 1 ⁴⁶	AG-024B-S-11-9009	11/30/2011
3	Next Generation 2 ⁴⁷	AG-024B-S-15-9003	2/19/2015
4	Basic Ordering Agreement 1 ⁴⁸	AG-024B-S-12-9028	3/11/2013
5	Basic Ordering Agreement 2 ⁴⁹	AG-024B-S-15-9012	3/24/2015
Contract Awards			
	Vendor	Contract ID	Date
1	Minden Air Corporation	AG-024B-C-13-9000	3/27/2013
2	Neptune Aviation Services, Inc.	AG-024B-C-13-9001	3/27/2013
3	Minden Air Corporation	AG-024B-C-13-9007	5/30/2013
4	Coulson Aviation Inc.	AG-024B-C-13-9006	5/30/2013
5	Aero-Flite, Inc.	AG-024B-C-13-9005	6/7/2013
6	Aero Air, LLC	AG-024B-C-13-9004	6/7/2013
7	10 Tanker Air Carrier, LLC	AG-024B-C-13-9003	5/30/2013
8	Neptune Aviation Services, Inc.	AG-024B-C-15-9028	9/30/2015
9	Aero-Flite, Inc.	AG-024B-C-15-9029	9/30/2015
10	10 Tanker Air Carrier, LLC	AG-024B-C-15-9030	9/30/2015
Basic Ordering Agreements			
	Vendor	BOA ID	Date
1	Evergreen International Airlines, Inc.	AG-024B-B-13-5000	6/14/2013
2	10 Tanker Air Carrier, LLC	AG-024B-B-13-5001	6/14/2013
3	10 Tanker Air Carrier, LLC	AG-024B-B-15-5057	6/18/2015
4	Aero-Flite, Inc.	AG-024B-B-15-5058	6/18/2015
5	Air Spray USA	AG-024B-B-15-5059	6/18/2015
6	Coulson Aviation Inc.	AG-024B-B-15-5060	6/18/2015
7	Neptune Aviation Services, Inc.	AG-024B-B-15-5061	6/18/2015

⁴⁴ We reviewed contracts awarded in FY 2013, which were resultant from solicitations that pre-dated FY 2013.

⁴⁵ Resulted in contract awards AG-024B-C-13-9000, and AG-024B-C-13-9001.

⁴⁶ Resulted in contract awards AG-024B-C-13-9007, AG-024B-C-13-9006, AG-024B-C-13-9005, AG-024B-C-13-9004, and AG-024B-C-13-9003.

⁴⁷ Resulted in contract awards AG-024B-C-15-9028, AG-024B-C-15-9029, and AG-024B-C-15-9030.

⁴⁸ Resulted in basic ordering agreements AG-024B-B-13-5000, and AG-024B-B-13-5001.

⁴⁹ Resulted in basic ordering agreements AG-024B-B-15-5058, AG-024B-B-15-5059, AG-024B-B-15-5060, and AG-024B-B-15-5061.

**USDA'S
FOREST SERVICE
RESPONSE TO AUDIT
REPORT**



Forest Service

Washington Office

201 14th Street, SW
Washington, DC 20024

File Code: 1430

Date: May 4, 2017

Subject: Forest Service Response to Reach Management Decision on Office of Inspector General Report No. 08099-0001-12, "Forest Service's Next Generation and Legacy Airtanker Contract Awards"

To: Gil H. Harden, Assistant Inspector General for Audit, Office of Inspector General

Thank you for the opportunity to review and comment on Office of Inspector General (OIG)

Draft Report Number 08099-0001-12. The Forest Service generally concurs with the OIG

findings, recommendations, and summary of monetary results and appreciates the time and effort

that went into the report. The agency's response to the audit recommendations is enclosed.

Please contact Antoine L. Dixon, Chief Financial Officer, at (202) 205-0429 or aldixon@fs.fed.us

with any questions.

/s/ Thomas L. Tidwell

THOMAS L. TIDWELL

Chief



USDA Forest Service (FS)

Office of Inspector General (OIG) Audit Report No. 08099-0001-12
Audit of Forest Service's Next Generation and Legacy Airtanker Contract Awards
Official Draft Issued April 11, 2017

Response to the Official Draft Report / Management Decision Request

Recommendation 1: Reevaluate the use of basic ordering agreements for obtaining “call when needed” Airtanker services and coordinate with applicable USDA offices to determine the best method and contract vehicle for acquiring “call when needed” Airtanker services and then establish procedures to operate within the bounds of the Federal Acquisition Regulations (FAR) and USDA procurement policies for the contract vehicle and method selected.

FS Response: FS generally concurs with this recommendation. The Agency worked with the USDA OPPM in 2015 to analyze which procurement method is the best for call when needed (CWN) Airtanker resources. USDA approved the most recent CWN basic ordering agreements (BOAs) solicitation. Recently, the FS formed the Transforming Incident Procurement Project (TIPP) team to improve incident procurements and their compliance with the Federal Acquisition Regulations (FAR), USDA procurement policies and other significant OMB mandates. The project is likely to result in process and system changes. Based on this recommendation, the TIPP team will follow up with USDA offices within the next year to coordinate on the review of contract vehicles for “call when needed” airtanker services. The FS will make a determination of the best acquisition method, type of contract vehicle and establish procedures to be used when TIPP recommendations are implemented, which is scheduled to occur in 2018 or 2019.

Estimated Completion Date: May 8, 2018

Recommendation 2: Determine if the contracts placed under the basic ordering agreements should be ratified and, if so, proceed accordingly.

FS Response: FS concurs with this recommendation. The FS will review previous CWN Airtanker orders in accordance with the agency's ratification process.

Estimated Completion Date: May 8, 2018

Recommendation 3: Revise FS' reporting procedures to ensure that information reported in FPDS accurately reflects the total dollars obligated or de-obligated by the contract action.

FS Response: FS generally concurs with this recommendation. FS understands the requirements of the FAR in reporting obligations and deobligations in conjunction with contract actions in FPDS. The nature of the requirement typically does not allow for instant recording of contract award obligations which would then be entered into FPDS-NG. Expenditures for flight time are paid through Wildland Fire Suppression Accounts which are not available for obligation until a fire is identified and therefore, funding for flight time has not been made in advance of a fire.

The total of awarded contract actions for obligations or deobligations equals the total payments made to the vendor; therefore the FS believes that while the contract action and the instant FPDS-NG record are not always in synch with the government obligation at a given time, the total amount the vendor received for a contract is accurately reflected in FPDS-NG via our current method of entry. The FS will review our contract action and FPDS-NG recording procedures and revise them to allow for the most accurate recording of obligations in FPDS-NG as is possible within the current system.

Estimated Completion Date: May 8, 2018

Recommendation 4: Correct data pertaining to open Airtanker contracts in FPDS to ensure it accurately reflects the total dollars obligated or de-obligated by the contract actions.

FS Response: FS concurs with this recommendation. FS will review the contract obligation actions issued and correct discrepancies in obligation actions or FPDS recording.

Estimated Completion Date: May 8, 2018

Recommendation 5: Identify and implement an appropriate method for recording the estimated flight hours for each Airtanker contract, as well as a method to adjust the estimated flight hour cost obligations to match the actual expenditure for the flight hours incurred via a contract modification.

FS Response: FS concurs with this recommendation. AQM will work with F&AM operations and budget staff to determine the most efficient method of estimating flight hour costs, obligating funds via a contract action for those costs in a timely manner and reconciling the actual costs via a deobligation modification.

Estimated Completion Date: May 8, 2018

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