



ACQUISITION
AND SUSTAINMENT

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

JUN - 6 2019

The Honorable Charles E. Grassley
Chairman
Senate Committee on Finance
United States Senate
Washington, DC 20510

Dear Senator Grassley:

In consideration of the questions in your May 13, 2019 letter to Acting Secretary of Defense, Patrick M. Shanahan, related to the Department of Defense Inspector General (DoD IG) Report, DODIG-2019-060 detailing the review of purchased parts from TransDigm Group, Inc., the Department provides the following response:

Question 1: Does the Department have current contracts with TransDigm? If so, please provide a list of current contracts the Department has with TransDigm along with the contract amounts.

For the period October 1, 2018 through April 11, 2019, the government negotiated 1,324 awards with TransDigm and its affiliates. The enclosed document provides a listing, by year, agency and vendor of the Department's contracts with TransDigm and its major affiliates and subsidiaries.

Question 2: Generally, what is the Department's success rate in obtaining voluntary refunds once it is deemed that the Department was overcharged on a particular contract? How many other voluntary refund requests Department-wide, are currently pending?

The Department has no record of voluntary refunds that were not related to regulatory or contractual requirements. At this time, outside of the requests made to TransDigm, the Department is not aware of any other pending voluntary refunds.

Question 3: What is the current status of the voluntary refund requests, identified in the report, that the Department requested TransDigm return to the Department? How many other outstanding voluntary refund requests are currently pending with TransDigm?

TransDigm has agreed to reimburse the Department for the subject voluntary requests for refunds. The Department has received payments from TransDigm in the amounts of \$11.52 million and \$4.38 million, totaling \$15.9 million of the \$16.1 million requested.

Question 4: The report stated TransDigm took advantage of its sole-source position on a number of contracts, particularly describing AeroControlex, a TransDigm subsidiary, as monopolistic. What steps has the Department taken to locate or develop alternate sources within the defense industry?

The Heads of the Contracting Activities have been directed to report to the Principal Director, Defense Pricing and Contracting, all contractors who refuse to provide cost or pricing information. This will provide the Department holistic insight into such denials of requests for cost or pricing data. Secondly, a group of functional experts has been formed to review the information to determine the scope of the problem; to identify sellers who routinely refuse to provide cost information; and to prioritize the parts and dealers that bear watching. Additionally, to improve our negotiating position with these contractors, Defense Contracting Management Agency's Commercial Item Group will be engaged to perform should cost analyses for high priority parts. These actions will enable the Department to prioritize those parts for which the Department may encourage the development of competition, through initiatives such as DoD or industry led reverse engineering programs.

Question 5: The report stated that contractors continually struggle to obtain cost data from TransDigm when attempting to make contracting decisions. Question 5a: Does TransDigm routinely reject the Department's request for cost data?

TransDigm rejects the Department's request for cost data in most cases, by claiming the parts to be "commercial of a type," and then invoking its interpretation of the statutory and associated regulatory limitations on the scope of the Department's requests for cost or pricing information to support fair and reasonable prices. This was recognized in the DoDIG Report 2019-060, in which it was noted that TransDigm rejected the Department's requests on 15 of the 16 parts for which the Department had requested cost or pricing data. The lone exception to TransDigm's denials was for the part that exceeded the threshold and was not otherwise exempt from the requirements of the Truth in Negotiations Act.

Question 6: Does the Department believe that contracting officers possess sufficient authority to enforce requests for uncertified cost data from its contractors? If not, what prohibits contracting officers from enforcing these requests? Please identify the current process for which contracting officers must go through in order to request cost data from entities.

The Department has reviewed existing laws and regulations and concluded they do not prohibit a company from exploiting a position where it owns the intellectual property and is in a sole source position. Since noncompliance with requests for submission of cost data requires contracting officers to elevate those denials to the heads of the contracting activities (HCAs), often such executive level attention exerts sufficient pressure on the contractors to provide the requested cost data. Unfortunately, this is not always the case, leading to the HCAs being required to determine that the need for the items or services, and the significant harm to the Department if awards are not made, are sufficient to warrant the payment of the offerors' unsupported prices.

Contracting officers utilize the following hierarchical system for determining the extent of uncertified cost or pricing data to request from contractors:

Market prices;

- a. Information submitted by the offeror of recent purchase prices paid by the Government and commercial customers for the same or similar commercial items under comparable terms and conditions;
- b. Prices paid for the same or similar items sold under different terms and conditions;
- c. Prices paid for similar levels of work or effort on related products or services;
- d. Prices paid for alternative solutions or approaches; and
- e. Other relevant information that can serve as the basis for determining the reasonableness of price. Other relevant information may include cost data, however no cost data may be required in any case in which there are sufficient non-Government sales of the same item to establish reasonableness of price in accordance with section 831 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239).

Question 7: The Department has released a memorandum pursuant to DoD IG recommendation 4.c. Will the Department commit to informing me as to the findings of the quarterly reporting that DOD IG recommended?

The Department is in the process of establishing the quarterly reporting that the DOD IG recommended. We will inform you of our findings in the forthcoming quarterly report, and we look forward to working with Congress on this and other steps to mitigate the circumstances that led to exorbitant price increases from sole-source suppliers.

Question 8: Does the Department have recommendations as to how Congress can further provide the department with the necessary authority to combat price-gouging? If so, please provide these recommendations in detail.

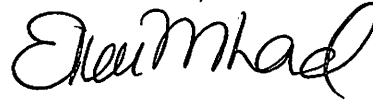
The Department recommends amending Paragraph (d)(1) of title 10 of the U.S.C., section 2306a, to require sole source contractors to submit uncertified cost information when the contracting officer determines that the price information submitted by the offeror is not adequate for evaluating the reasonableness of price.

Our recommended changes maintain the existing requirements of title 10, U.S.C., section 2306a, Submission of uncertified cost or pricing data, which state that uncertified cost information—

- a. Shall not be required in the case of a contract, a subcontract, or modification of a contract or subcontract for which the price agreed upon is based on adequate competition that results in at least two or more responsive and viable competing bids, or prices set by law or regulation; and

b. Shall be required only to the extent necessary to determine the reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract. Thank you for your support of the men and women in the Department of Defense.

Sincerely,

A handwritten signature in black ink, appearing to read "Ellen M. Lord". The signature is fluid and cursive, with the first name "Ellen" and last name "Lord" being more prominent than the middle initial "M".

Ellen M. Lord

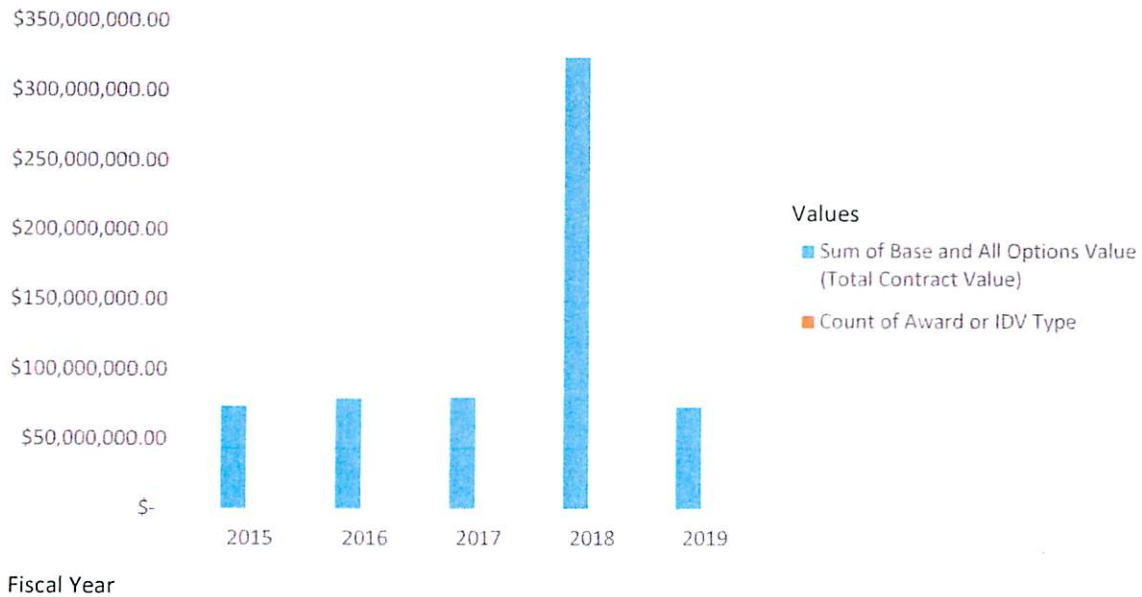
Enclosure:

As stated

Row Labels	Sum of Base and All Options Value (Total Contract Value)	Count of Award or IDV Type
2015	\$ 74,618,079.22	860.00
2016	\$ 79,932,748.10	864.00
2017	\$ 80,808,638.53	931.00
2018	\$ 325,380,834.71	1,265.00
2019	\$ 73,977,773.08	777.00
Grand Total	\$ 634,718,073.64	4,697.00

Sum of Base and All Options Value (Total Contract Value)Count of Award or IDV Type

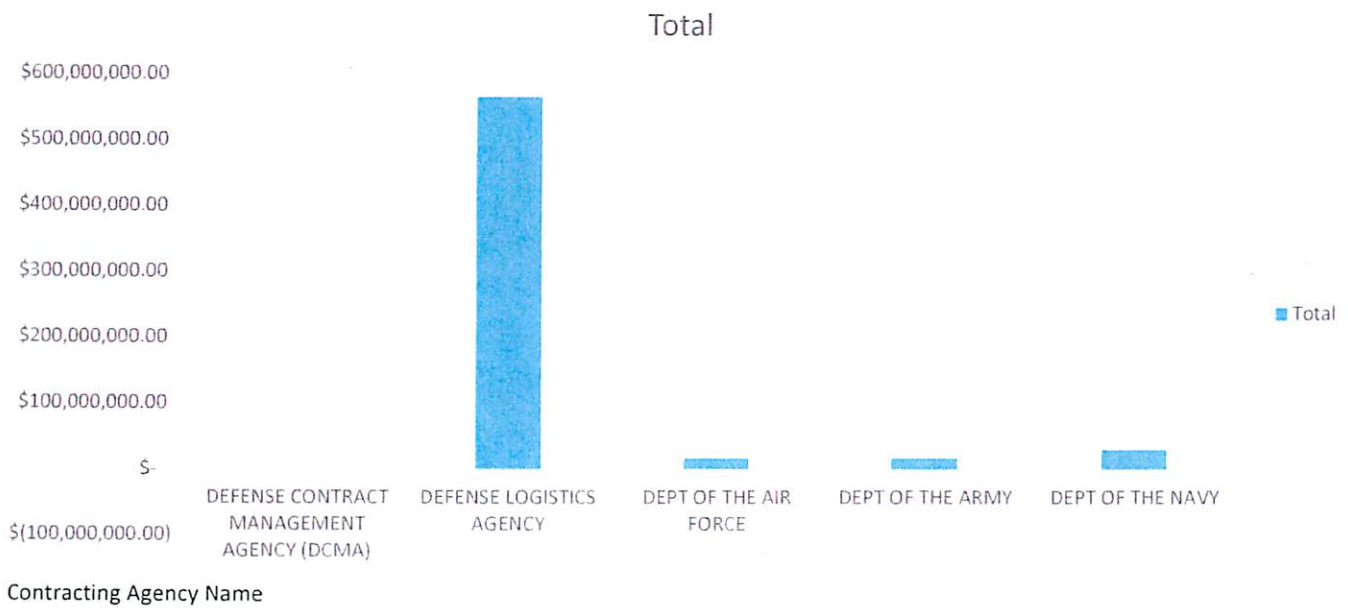
Summary of Total Contract Value FY 2015 thru 11 April 2019



Enclosure

Contracting Agency	Sum of Base and All Options Value (Total Contract Value)
DEFENSE CONTRACT MANAGEMENT AGENCY (DCMA)	\$ (115,770.38)
DEFENSE LOGISTICS AGENCY	\$ 567,686,118.99
DEPT OF THE AIR FORCE	\$ 17,692,627.27
DEPT OF THE ARMY	\$ 18,421,407.00
DEPT OF THE NAVY	\$ 31,033,690.76
Grand Total	\$ 634,718,073.64

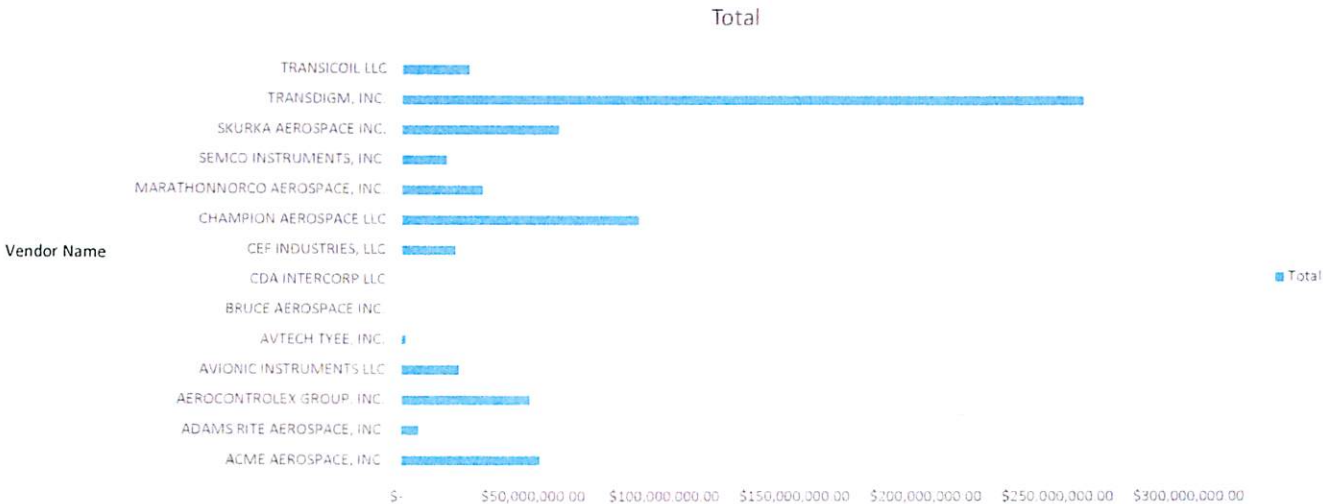
Sum of Base and All Options Value (Total Contract Value)



TransDigm and its Affiliates

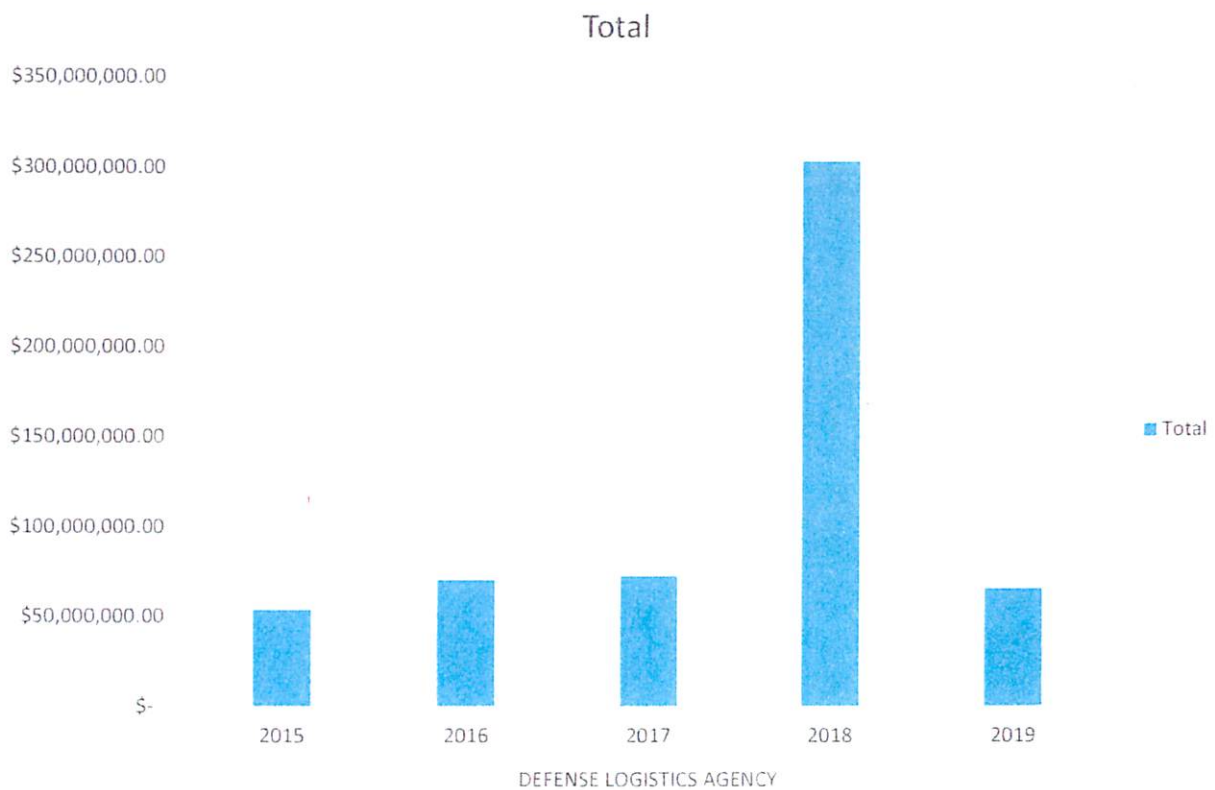
Vendor Name	Sum of Base and All Options Value (Total Contract Value)
ACME AEROSPACE, INC.	\$ 52,668,588.57
ADAMS RITE AEROSPACE, INC.	\$ 6,609,775.08
AEROCONTROLEX GROUP, INC.	\$ 48,736,759.05
AVIONIC INSTRUMENTS LLC	\$ 21,958,972.47
AVTECH TYEE, INC.	\$ 1,769,681.18
BRUCE AEROSPACE INC.	\$ 110,760.11
CDA INTERCORP LLC	\$ 423,270.00
CEF INDUSTRIES, LLC	\$ 20,348,127.62
CHAMPION AEROSPACE LLC	\$ 90,103,244.17
MARATHONNORCO AEROSPACE, INC.	\$ 30,851,695.10
SEMCO INSTRUMENTS, INC.	\$ 16,762,329.32
SKURKA AEROSPACE INC.	\$ 59,386,774.05
TRANSDIGM, INC.	\$ 259,704,538.36
TRANSCOIL LLC	\$ 25,283,558.56
Grand Total	\$ 634,718,073.64

Sum of Base and All Options Value (Total Contract Value)



Contracting Agency	Sum of Base and All Options Value (Total Contract Value)
DEFENSE LOGISTICS AGENCY	\$ 567,686,118.99
2015	\$ 53,883,955.74
2016	\$ 70,813,889.35
2017	\$ 72,978,131.92
2018	\$ 304,238,826.89
2019	\$ 65,771,315.09
Grand Total	\$ 567,686,118.99

Sum of Base and All Options Value (Total Contract Value)



Contracting Agency Name Fiscal Year