

USDA Forest Service and Department of the Interior Firefighting Aviation Contracts

Request: The Committee directs the Forest Service in partnership with the Department of the Interior, to prepare and submit a report to the Committee within 90 days of enactment of this Act outlining current statutory limitations that prohibit the use of 10-year contracts. Additionally, the report shall include current contract requirements that ensure a modern and safe aviation fleet and how a shift to 10-year contracting could impact those requirements. The report shall state how many aviation contracts the Forest Service and Department of the Interior have issued over the last 10 years, as well as any anticipated changes in either the number of contracts issued, the costs, or the type of contract vehicle used, due to a shift to 10-year contracting. Finally, the Forest Service shall provide input on how a potential pilot program for 10-year contracts could be implemented.

Introduction

The Forest Service and the Department of the Interior (DOI) contract aviation resources for the Nation's wildland fire response. These include helicopters, airtankers, and other fixed-wing aircraft. After-action reviews are conducted each year to improve procurement strategies for aviation resources and ensure cost-effectiveness. The Agencies are committed to providing multiple contracting options, such as exclusive-use (EU), call-when-needed (CWN), indefinite delivery, indefinite quantity (IDIQ), multiple award task order contracts (MATOC), and agreements, to secure aviation resources needed to effectively respond to and meet national wildland fire needs and ensure vendors can maintain the most modern fleet to meet industry standards. These contracts provide incentives and some financial security which allows the vendors to invest in the new technology and more modern aircraft.

Between fiscal year (FY) 2011 and FY 2017, the Forest Service firefighting aviation contracts required a conversion of the airtanker fleet from the 1950's-era aircraft to more modern airtankers to meet current firefighting aviation requirements. Through the process, the Agency engaged the vendors to ensure long-term viability for firefighting aircraft services. The Agency is shifting away from multi-year guaranteed contracts that require tens of millions of dollars in cancellation fees alone, to MATOC which have more flexibility in awards and length of contract.

As the Forest Service moved forward with Next Generation 3.0, the next contract for airtankers, a careful review of industry capability, available aircraft, and funding restrictions showed adequate stability and competition within the industry to justify a standard contract award with one base year plus four option years. This contract structure does not require cancellation fees and results in lower daily costs than the previous Next Generation 2.0 contract.

Current statutory limitations prohibiting the use of 10-year contracts

Currently, there are no statutory limitations prohibiting the use of 10-year contracts; however, for the Forest Service, contracts exceeding 5 years require additional review and approval by the Mission Area Senior Contracting Officer (MASCO) and justified in the Acquisition Plan¹. For the DOI, the policy on Approvals for Contracts Exceeding 5 Years requires the Head of the Contracting Activity to approve all justifications for contracts exceeding the 5-year limitation in FAR 17.204(e). Justification for exceeding 5 years is based on market research and technical

¹ USDA Delegation Matrix: <https://www.dm.usda.gov/procurement/policy/docs/Delegation+Matrix+11012021.pdf>

program area expertise, including considerations such as the existing and anticipated vendor pool in relation to needs, impacts to competition, and technological advancements. For clarity throughout this report, please note that a 10-year contract is not necessarily a guaranteed multi-year contract; it is only considered multi-year when there is a guaranteed period of more than 1 year.

Current contract requirements that ensure a modern and safe aviation fleet and how a shift to 10-year contracting could impact those requirements

As technology and safety standards are reviewed and updated, the Forest Service incorporates new specifications into contract requirements to ensure that all aircraft supporting the national wildland fire response meet current industry standards. Adding new requirements into an existing multi-year guaranteed contract requires bilateral contract modification agreed upon by all vendors, which can be hard to achieve. A shift to 10-year (multi-year guaranteed) contracts would exacerbate this issue by making it very difficult to add new requirements but every 10 years. In this case, once the contract is awarded, all the negotiated cancellation fees must be held for the duration of the contract (10 years). Alternatively, structuring contracts as 1-year guarantee (base year) plus nine-option-years would provide the Forest Service an opportunity to add new technology and safety specifications each year prior to awarding the next option year, and do not require any cancellation fees to be obligated.

For DOI and the Forest Service, the current contracting process ensures aviation fleet safety, including developing specifications and in-use evaluations. Contracts incorporate Federal Aviation Administration standards, include Agency-specific special mission oversight, and add technological advancements as available. In most cases, for multi-year guaranteed contracts, the development of advanced aerial firefighting equipment would be in support of and dependent on an existing contract award, meaning the award would need to occur years prior to using the new technology to allow for the technology to mature and be ready for use during the intended fire season. The early award would depend on significant funding, perhaps even enough to cover a multi-year guaranteed contract. Based on this early award, the funding would have to be available over and above current funding so services provided by legacy aircraft would not be interrupted while the new, modernized aircraft were completing special mission development. Contract structure plays a role as it relates to small business set asides. Small businesses may struggle to propose and support the development and fielding of advanced technologies under length of contract. For a contract with 1-year guaranteed plus nine option years, it would be much easier to add the new technology requirements as needed.

A shift to 10-year contracting would have little effect on aviation fleet safety. Regardless of the duration of the contract, specifications will continue to ensure contracts are awarded to vendors with excellent safety records, and equipment and personnel are inspected and approved per contract provisions.

Number of aviation contracts issued by the Forest Service and Department of the Interior over the last 10 years and any anticipated changes in either the number of contracts issued, the costs, or the type of contract vehicle used, due to a shift to 10-year contracting

The Forest Service issued 746 aviation contracts between FY 2011 and FY 2021. Table 1 details the number of aviation contracts issued each year by resource type. The numbers vary by year because they are multi-year contracts which are not reissued yearly. Multiple aircraft may be

procured under each contract. The Forest Service plans, executes, and manages all aviation acquisitions required to meet Agency goals and performance measures, and establishes governance in the process, which creates additional efficiencies in the acquisition process. The Forest Service uses two primary types of contracts for aviation assets:

- exclusive use, which guarantees the availability of an asset for a defined period; and
- call when needed, where availability is based on the availability of the aircraft.

Table 1. Forest Service aviation contracts issued between FY 2011 and FY 2021.

Asset Type	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Helicopter EU ^a Type 1	-	14	-	-	10	-	-	-	-	-	-
Helicopter EU ^a Type 2	-	-	-	16	-	-	-	17	-	2	-
Helicopter CWN ^b Type 1 and 2	-	57	-	-	57	-	-	-	-	68	-
Helicopter EU ^a Type 3	2	12	9	5	1	7	8	19	3	-	7
Helicopter CWN ^b Type 3	27	23	-	4	25	31	2	7	11	36	19
Light Fixed Wing EU ^a	1	13	1	2	-	3	12	-	2	2	-
Light Fixed Wing CWN ^b	41	15	9	-	31	15	-	11	9	-	25
Light Fixed Wing National Air Attack	-	-	-	-	-	-	-	-	5	-	-
Airtanker Next Generation	-	-	4	1	3	-	-	-	-	-	3-
Large Airtanker Legacy	-	-	2	-	-	-	-	-	-	-	-
Large Airtanker CWN ^b	-	-	-	-	5	-	-	-	6	-	-
Very Large Airtanker CWN ^b	1	-	2	-	-	-	-	-	-	-	-
Aerial Supervision Module	-	1	-	-	1	1	1	-	-	1	-
Large Jet Transport	-	-	-	-	6	-	1	2	1	1	1-
Smokejumper Aircraft	2	-	-	-	1	2	-	-	-	2	-
Multi-Engine Water Scooper	-	-	-	1	-	1	1	-	-	-	-
Drone/Unmanned Aircraft	-	-	-	-	-	-	-	-	-	1	-
Total, Forest Service Aviation Contracts	74	135	27	29	140	60	25	56	37	113	55

^a EU = Exclusive use

^b CWN = Call when needed

The number and cost of contracts issued, and the type of contract assets used each year are subject to changing programmatic requirements, as well as new acquisition regulations that are outside Forest Service control. The number and type of aviation resources available to the Forest Service depend on private industry capability. Contract amounts are a function of programmatic requirements, supply and demand for that asset, and the type of contract used. The Forest Service reviews its Aviation Acquisition Strategy routinely and makes changes as appropriate to the number, type, and length of contracts offered. The Forest Service does not anticipate any significant changes in the number or cost of 10-year aviation contracts unless changed to 10-year guaranteed contracts. The cancellation fee requirements for 10-year guaranteed contracts would increase overall contracting costs significantly, whereas a 10-year contract structured as one base year plus nine option years does not require any cancellation fees.

The DOI issued 881 aviation contracts between FY 2011 and FY 2021. Table 2 details the number of aviation contracts each year by resource type. DOI plans, executes, and manages all aviation acquisitions required to meet Agency goals and performance measures, and establishes governance in the process, which creates additional efficiencies in the acquisition process. The DOI uses two primary types of contracts for aviation assets:

- exclusive use, which guarantees the availability of an asset for a defined period; and
- call when needed, where availability is based on the availability of the vendor.

Table 2. DOI aviation contracts issued between FY 2011 and FY 2021.

Asset Type	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Aerial Supervision Module	-	-	-	1	-	-	1	-	-	-	-
Drone	-	-	-	-	2	1	-	5	6	-	-
Fire Boss (Single-Engine Water Scooper)	-	1	1	2	-	4	-	-	2	-	2
Helicopter CWN ^a Type 1 and 2	-	-	-	-	-	-	7	-	-	-	-
Helicopter CWN ^a Type 3	4	47	66	2	14	-	89	-	-	4	-
Helicopter EU ^b Type 1	-	-	-	-	-	-	1	-	-	-	-
Helicopter EU ^b Type 2	-	2	2	3	6	2	1	3	2	1	2
Helicopter EU ^b Type 3	5	26	11	5	10	4	12	5	10	5	4
Light Fixed Wing CWN ^a	1	141	5	3	6	1	108	2	1	1	38
Light Fixed Wing EU ^b	-	7	6	-	1	-	1	2	-	1	1
Light Fixed Wing National Air Attack	7	6	-	29	4	1	-	20	2	2	-
Multi-Engine Water Scooper	-	2	-	1	-	-	-	-	-	-	-
SEAT ^c	18	5	3	23	-	2	16	-	14	1	4
Smokejumper Aircraft	1	-	-	-	1	2	3	-	-	2	3
Total, DOI Aviation Contracts	36	237	94	69	44	17	239	37	37	17	54

^a CWN = Call when needed

^b EU = Exclusive use

^c Single Engine Air Tanker

The number and cost of contracts issued, and the type of contract assets used each year are subject to changing programmatic requirements as well as new or amended acquisition regulations that are outside the Agency's control. The number and type of aviation resources available to DOI depends on private industry capability. Contract amounts are a function of programmatic requirements, supply and demand for that asset, and the type of contract used. The DOI reviews its aviation contracting strategy annually and makes changes as appropriate to the number, type, and length of contracts offered. DOI does not anticipate any significant changes in the number of or cost of 10-year aviation contracts unless changed to 10-year guaranteed contracts. The cancellation fee requirements for 10-year guaranteed contracts will increase overall contracting costs significantly.

Potential implementation of a 10-year pilot program for aviation contracts

The Forest Service is implementing 10-year MATOCs. Contracts with this structure do not require a cancellation fee, only a guaranteed minimum dollar amount paid to each vendor annually, effectively securing the needed resources at a significant cost savings.

Request: Discuss whether modifying cancellation ceilings for longer-term aviation contracts, consistent with practices used for longer-term stewardship contracts, as provided by Division O of Public Law 115-141, could assist the Agencies in having long-term certainty and affordability for modern aviation assets.

The application of this authority to aviation contracts would provide the Forest Service additional options for managing cancellations fees over a longer contract period. Currently, all cancellation fees must be obligated when the contract is awarded, which is prohibitively expensive for contracts with more than one base year. The obligation of cancellation fees across base years would reduce the Agency's financial burden in any one fiscal year.

Currently, DOI does not have any cancellation ceilings on any of their aviation contracts, because they do not award multi-year guaranteed contracts. Similar to the pilot suggested above, DOI awards multiple year IDIQ contracts with one base year plus option years.

The Forest Service and DOI continue to work closely with private industry on new requirements to continually improve the modern aviation wildland fire response fleet. To date, private industry has been very responsive in meeting the changing needs. The Agencies will continue to update aircraft requirements and resource composition as necessary to provide the safest, most effective wildland fire response for the Nation.