

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

January 19, 2018

Mr. Tony Tooke
Chief
U.S. Forest Service
201 14th Street, S.W.
Washington, D.C. 20024

Dear Chief Tooke:

According to the National Interagency Fire Center more than 9.7 million acres were consumed by wildfires this past year, 49 percent more than the average for the last ten years.¹ In addition to the tragic loss of life, this season's wildfires have destroyed thousands of homes and businesses, damaged popular recreation sites, produced hazardous air quality, threatened national parks,² and jeopardized water supplies.³ Last year, the United States Forest Service (USFS) set a new record by spending more than \$2 billion fighting forest fires.⁴ Fire suppression spending has ballooned from 15 percent to 55 percent of the Forest Service's budget.⁵ In its 2018 budget, USFS requested \$244 million for aerial tanker contracts and operations, an increase of \$110 million from 2016 appropriations.

Given the significant expenses associated with fighting wildfires, USFS must ensure that taxpayer resources are spent on the most effective equipment and methods. Achieving such results requires efficient and competent government contracting methods. Unfortunately, when sustaining a contractor's recent bid protest, the Government Accountability Office (GAO) described the USFS aerial tanker program as having "a long and contentious history," of serious,

¹ Bill Gabbert, *Nearly a Record Breaking Year for Acres Burned in the U.S.*, WILDFIRE TODAY, Jan. 10, 2018, available at <http://wildfiretoday.com/tag/statistics/>.

² Steven DuBois, Amy Beth Hanson, & Nicholas K. Geranios, *2017 Wildfire Season in US West Far Worse than Expected*, ABC NEWS, Sept. 7, 2017, available at <http://abcnews.go.com/International/wireStory/wildfire-weary-western-us-coughs-late-season-surge-49673121>.

³ Cecelia Smith-Schoenwalder, *Worsened by Climate, Blazes Will Hurt Western Water – USGS*, ENERGY & ENV'T. NEWS, Sept. 8, 2017, available at <https://www.eenews.net/greenwire/stories/1060060133>; see also Kyle Spurr, *Summer Lake Wildfire Threatening Homes, Sage Grouse Habitat*, THE BULLETIN, July 10, 2017, available at <http://www.bendbulletin.com/localstate/5438582-151/summer-lake-wildfire-threatening-homes-sage-grouse-habitat>.

⁴ Press Release, U.S. Dep't of Agric., U.S. Forest Serv., *Wildland Fire Suppression Costs Exceed \$2 Billion* (Sept. 14, 2017), available at <https://www.usda.gov/media/press-releases/2017/09/14/forest-service-wildland-fire-suppression-costs-exceed-2-billion>.

⁵ Valerie Richardson, *Wildfires in the West Revive Push to Thin Federal Forests*, WASH. TIMES, Sept. 7, 2017, available at <http://www.washingtontimes.com/news/2017/sep/7/wildfires-in-the-west-revive-push-to-thin-federal/>.

systemic procurement and contracting problems.⁶ For example, in the 1990s, USFS-led efforts to modernize government contractors' aerial tanker fleets resulted in the agency illegally transferring ownership of military surplus planes.⁷ The scandal ended with USFS's then Deputy Director of Fire and Aviation being found guilty of conspiring against the laws of the United States.⁸ Incredibly, at least one of the illegally transferred planes was subsequently linked to drug trafficking in Mexico.⁹

More recently, GAO's Office of General Counsel has received multiple bid protests against USFS's aerial tanker contracting awards. In sustaining a 2017 aerial tanker bid protest, GAO concluded that USFS's reasons for excluding a specific class of aerial tankers from a solicitation did "not withstand logical scrutiny" and recommended USFS "make a documented determination of its needs."¹⁰ In another successful bid protest, GAO found that, despite the great discretion given to federal agencies in contracting decisions, there was "not a reasonable basis" for USFS entering into a non-competitive, single source aerial tanker contract.¹¹ Frustratingly, these successful bid protests simply reiterate many of the shortcomings previously identified in a 2013 GAO report.¹² Specifically, GAO stated that USFS needed to "enhance their abilities to identify their firefighting aircraft needs and better ensure they obtain aircraft that meet those needs," by systematically collecting information on aircraft performance.¹³

The absence of a comprehensive scientific study on what types of aerial tankers and tactics are most effective in combating wildfires contributes to USFS's problems. As a result, USFS struggles to defend its contracting decisions or justify its aerial tanker budget requests and fleet modernization plans.¹⁴ In 2012, USFS initiated the "Aerial Firefighting Use and Effectiveness Study" (AFUE) with the first findings expected to be released in 2016.¹⁵ In written testimony before the Senate Committee on Energy and Natural Resources in 2015, however, the GAO stated that USFS and the Department of the Interior still had "not established specific

⁶ *In re Coulson Aviation (USA) Inc.*, B-409356.2 *et al.*, 2014 CPD ¶ 106, p. 2 (Comp. Gen. Mar. 31, 2014) available at <https://www.gao.gov/assets/670/662247.pdf>.

⁷ *United States v. Fuchs*, 218 F.3d 957 (9th Cir. 2000); see also *Aero Union Corp. v. United States*, 47 Fed. Cl. 677 (2000); see also *Int'l Air Response v. United States*, 75 Fed. Cl. 604 (2007).

⁸ *Fuchs*, *supra* note 7.

⁹ Tim Steller, *Mexican Drug Runners may have used C-130 from Arizona*, THE ARIZONA DAILY STAR, April 15, 1998.

¹⁰ *Matter of Global SuperTanker Services, LLC*, B-414987 *et al.*, 2017 CPD ¶ 321 (Comp. Gen. Nov. 6, 2017), available at <https://www.gao.gov/assets/690/688291.pdf>.

¹¹ *Coulson Aviation (USA) Inc.*, *supra* note 6; see also *Matter of Coulson Aviation (USA) Inc.*, B-406920.6 *et al.*, 2013 CPD ¶ 197 (Comp. Gen. Aug. 22, 2013), available at <https://www.gao.gov/assets/660/657164.pdf>.

¹² U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-13-684, *Wildland Fire Management: Improvement Needed in Information, Collaboration, and Planning to Enhance Federal Fire Aviation Program Success* (2013) available at <https://www.gao.gov/assets/660/657000.pdf>.

¹³ *Id.* at p. 37.

¹⁴ *Wildland Fire Management, Agencies' Efforts to Assess Program Effectiveness and Modernize the Firefighting Aviation Fleet: Hearing Before the S. Comm. on Energy and Natural Res.*, 114th Cong. 13-14 (statement of Anne-Marie Fennell, Director Natural Res. and Environment, GAO), available at <https://www.gao.gov/products/GAO-16-217T>.

¹⁵ U.S. DEP'T OF AGRIC., U.S. FOREST SERV., *Aerial Firefighting Use and Effectiveness*, <https://www.fs.fed.us/managing-land/fire/aviation/afue> (last visited Jan. 16, 2018).

criteria for selecting fires for review and conducting the reviews.”¹⁶ As of the date of this letter, the results of the AFUE have not been published.

The Committee on Natural Resources has led efforts to improve and reform federal wildfire suppression programs, including securing passage of the Resilient Federal Forests Act (H.R. 2936) in the U.S. House of Representatives. In addition, Subcommittee staff have met with USFS and GAO officials on multiple occasions related to this issue. To assist this Subcommittee in its ongoing oversight of federal wildfire fighting programs, please provide the following documents and information as soon as possible, but no later than 5:00 p.m. on February 2, 2018:

1. Documents sufficient to show the status of the AFUE study, including data collected to date and the expected publication date for the first completed AFUE;
2. Documents sufficient to show USFS’ plans for modernizing the firefighting aviation fleet;
3. Documents sufficient to show how USFS developed and awarded contract No. AG-024B-C-14-9000 for next generation large airtanker services for wildland firefighting support, including documents relating to any bid protests and lawsuits challenging the contract award; and
4. Documents sufficient to show how the USFS developed and drafted the terms of request for proposal (RFP) No. AG-024B-S16-9014 for the next generation large airtanker services for wildland firefighting, including documents relating to any bid protests and lawsuits challenging the RFP.

Please contact John Strom and Sang Yi of the Oversight and Investigations Subcommittee staff at (202) 225-7107 with any questions about this request. Thank you for your attention to this matter.

Sincerely,



Bruce Westerman
Chairman
Subcommittee on Oversight and Investigations

¹⁶ Hearing, *supra* note 14.