



THE SECRETARY OF THE NAVY
WASHINGTON DC 20350-1000

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Dear Ms. Lerner:

Thank you for your letter of November 13, 2012, File No. DI-12-3751/3765, requesting an investigation at the Fleet Readiness Center Southwest (FRCSW), North Island, California. Your letter states that two FRCSW employees disclosed that FRCSW knowingly obtained bearings to use in the T-34/T-44 landing gear overhaul program from a Japanese manufacturer, in violation of federal domestic-content laws and regulations. Additionally, the complainants alleged that the foreign-made bearings pose a safety hazard to pilots and the public because they are more likely to corrode than U.S.-manufactured bearings.

The inquiry which was led by the Naval Inspector General (NAVINSGEN) determined that the Fleet Logistics Center, San Diego (FLC SD), purchased the bearings for FRCSW. The inquiry found that a FLC SD Contracting Officer improperly executed two contracts for the purchase of foreign-made bearings because he failed to obtain a waiver of a statutory domestic manufacture requirement before making the purchase, or to include a contract clause that would have authorized him to refuse to accept foreign-made bearings.

The inquiry also found that FRCSW leadership mismanaged the T-34/T-44 landing gear actuator production process by failing to use due diligence to ensure that FRCSW artisans only used bearings purchased in accordance with U.S. law and regulations. Nonetheless, due to the unique circumstances of this case, the NAVINSGEN concluded that the Quality Assurance Specialist who approved the use of the foreign-made bearings acted reasonably based on the information that was available to him at the time.

The investigation disclosed no evidence or information that suggests that the foreign-made bearings create any danger to the safety of the aircraft in question or the personnel flying them. The NAVINSGEN concluded that there is no reason to ground any of the aircraft that use foreign-made bearings in the actuators. A similar safety-related inquiry by the Defense Criminal Investigative Service reached the same conclusion.

Based upon the findings of the NAVINSGEN report, and to ensure that appropriate corrective actions are implemented as expeditiously

as possible, I am directing the Chief of Naval Operations to take the necessary steps to ensure due consideration of the Inspector General recommendations at the appropriate organizational level and report back to me within 30 days. Furthermore, he will assess the additional risk, if any, to safety of operations that may result from using refurbished or not newly manufactured bearings in the overhaul of landing gear assemblies of these aircraft. Additionally, the Assistant Secretary of the Navy (Research, Development and Acquisition) will work with the Defense Logistics Agency to identify domestic sources of the bearings that the Department of the Navy requires to overhaul these aircraft. I am also directing the Assistant Secretary of the Navy (Financial Management and Comptroller) (Acting) to expeditiously process any Anti-Deficiency Act violations to their conclusion.

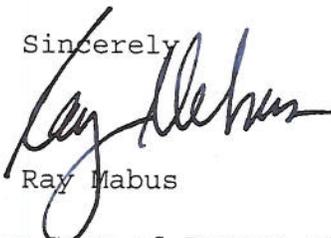
I authorize the NAVINSGEN to provide you supplemental reports as necessary to inform you of further actions that the DON takes in connection with these matters.

I am enclosing two versions of the report of investigation. The first contains names of witnesses and is for your official use. I understand that you will provide a copy of this version to the Complainants, the President, and the House and Senate Armed Services Committees for their review.

The second version excludes the names of witnesses and is suitable for release to the general public. As has been the case with other reports that the DON has provided to your office since September 11, 2001, I request that you make only this redacted version available to members of the public. My request is based on the Freedom of Information Act, the Privacy Act, and Department of Defense policy. I understand the NAVINSGEN has provided you more detailed information on this matter in connection with other reports that I have sent to your office.

Again, thank you for bringing this matter to our attention. If I may be of any further assistance, please let me know at your earliest convenience.

Sincerely



Ray Mabus

Enclosures: (1) For Official Use Copy of Report of Investigation
(2) Public Release Copy of Report of Investigation

Office of the Naval Inspector General
OSC DI-12-3751
NAVINGEN 201203885
Report of Investigation
17 May 2013 Updated 3 June 2013
FLEET READINESS CENTER SOUTHWEST, NORTH ISLAND, CA
FOREIGN BALL BEARINGS

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Office of the Naval Inspector General

OSC DI-12-3751

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FOREIGN BALL BEARINGS

Preliminary Statement

1. This report is issued pursuant to a 13 November 2012 Office of Special Counsel (OSC) letter tasking the Secretary of the Navy (SECNAV) to conduct an investigation under 5 U.S.C. § 1213.

2. OSC is an independent federal agency whose primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices. OSC also serves as a channel for federal workers to make allegations of: violations of law; gross mismanagement or waste of funds; abuse of authority; and a substantial and specific danger to the public health and safety.

3. Reports of investigation conducted pursuant to 5 U.S.C. § 1213 must include: (1) a summary of the information for which the investigation was initiated; (2) a description of the conduct of the investigation; (3) a summary of any evidence obtained from the investigation; (4) a listing of any violation or apparent violation of law, rule or regulation; and (5) a description of any action taken or planned as a result of the investigation, such as changes in agency rules, regulations or practices, the restoration of employment to an aggrieved employee, disciplinary action, and referral of evidence of criminal violations to the Attorney General.

Introduction

4. The OSC tasking stems from a complaint OSC received concerning the purchase of ball bearings, not produced or manufactured in the United States or Canada, that the Fleet Readiness Center Southwest (FRCSW), a subordinate of the Naval Air Systems Command (NAVAIR), uses to repair and overhaul

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landing gear assemblies¹ for two naval training aircraft, the single engine T-34 and the twin engine T-44 (hereafter, collectively, T-34/T-44). The OSC Complainants allege that such purchases are illegal absent a SECNAV decision to waive a restriction on the purchase of these "foreign-made" bearings that appears in various laws and implementing regulations. Complainants allege that neither FRCSW nor its purchasing agent supplier, the Fleet Logistics Center, San Diego (FLC SD) obtained waivers before FLC SD purchased the bearings and FRCSW installed them.² Complainants next allege that the foreign-made bearings pose a risk to safety because they are prone to corrosion. Complainants also allege FRCSW Quality Assurance (QA) leadership mismanaged the foreign bearing issue by refusing adequately to address their concerns about the legality of purchasing and using foreign-made bearings. Finally, they allege a specific QA Specialist (QAS) approved paperwork required to permit FRCSW Artisans³ to install the foreign-made bearings, even though he knew they had been purchased without first obtaining a waiver required by law.

5. Thus, our investigation focuses on a metallic part called a ball bearing, a single item among many in the landing gear components of naval aircraft. The purpose of a bearing, of which a ball bearing is but one example, is to reduce rotational friction and support radial and axial loads. Ball bearings or "bearings" are discussed in this report as if they are a single part or "end item," but they actually are comprised of several pieces or components. The smaller of two concentric steel rings of metal (called "rings" or "races") sits inside the larger to create a slot or track between them. Round steel balls lie in

¹ For brevity, we will refer to maintenance, repair, and overhaul efforts as "overhaul." Landing gear assemblies include such components as struts, wheels, tires, gears, and actuators, which transmit signals to raise and lower the landing gear. We use "components" in place of "assemblies" in this report, and focus on the actuators, where the foreign bearings in question are located. An actuator is a gearbox mechanism driven by an electric motor that moves in two directions to extend and retract the landing gear.

² The statutory restriction has appeared in most Department of Defense (DoD) Appropriations Acts since 1992, and is implemented by Section 225.7009 of the Defense Acquisition Regulation Supplement (DFARS), which specifically mentions the Fiscal Year 2002 Act. The laws and regulation use such terms as manufactured, produced, or supplied to describe the foreign nature of the ball bearings. For convenience, this report usually refers to them as the "foreign-made" ball bearings and often omits the term "ball" because only ball bearings are at issue in this case.

³ Artisan is the term FRCSW uses to refer to its skilled production workers.

the slot created by the two races and keep the space between the races constant. Because they sit between the races, the balls create the rolling properties of the bearing. Some bearings, depending on quality and price, use a "cage" or "retainer" to hold and separate the balls from each other as they roll between the races. Since the ball is a sphere, the contact area with the races is very small, which helps the balls and races to spin smoothly and reduces the friction between them. In most applications, one race is stationary while the other is attached to a rotating assembly such as a hub or shaft. Therefore, as one of the races rotates, it causes the balls to rotate as well. Appendix C depicts a typical ball bearing.

Summary of Findings and Conclusions

6. This report addresses and substantiates two of the following four allegations:

Allegation One: That in April 2012, FLC ContOff executed a contract for the purchase of bearings that were not produced in the United States or Canada, in violation of Defense Federal Acquisition Regulation Supplement (DFARS) Section 225-7009, "Restriction on ball and roller bearings." (substantiated)

Allegation Two: That the foreign-made bearings FRCSW Artisans used to overhaul T-34/T-44 landing gear actuators in 2012 are prone to corrosion that creates a danger to public health and safety. (not substantiated)

Allegation Three: That FRCSW leadership mismanaged the T-34/T-44 landing gear actuator production process by failing to use due diligence in assuring that FRCSW Artisans only installed bearings purchased in conformance with U.S. law and regulations. (substantiated)

Allegation Four: That on 17 May 2012, FRCSW Quality Assurance Specialist QAS-1 stamped and certified documents the FRCSW QA Leadership considered necessary to authorize Artisans to use bearings manufactured in Japan for the overhaul of T-34 actuators even though he knew that the bearing purchase violated DFARS Section 225-7009, "Restriction on ball and roller bearings." (not substantiated)

7. Our investigation disclosed no evidence or information that suggests the bearings FRCSW installed in T-34/T-44 aircraft create any danger to the safety of the aircraft in question or

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the personnel flying them. There is no reason to ground any of the aircraft that use foreign-made bearings in their landing gear components.

8. During the course of this investigation, we learned that the Defense Logistics Agency Aviation North Island (DLAA NI)⁴, which is co-located on North Island with FRCSW and FLC SD, has stopped issuing to FRCSW the previously purchased foreign-made bearings that FRCSW has not already used to overhaul landing gear components. We understand that DLAA NI does not intend to release the bearings for FRCSW use absent a SECNAV waiver, which FLC SD requested after the start of this investigation. We did learn, however that several landing gear actuators, the component that uses the foreign-made bearings at issue in this case, are now at FRCSW awaiting overhaul. In the absence of a waiver, FRCSW may miss the date it has agreed to return landing gear components to the fleet. We have not determined when FRCSW must return those components to the fleet in order to avoid mission degradation, to include pilot training.

9. After the start of this investigation, NAVAIR personnel who were attempting to identify domestic bearing sources thought they had identified a domestic manufacturer of an adequate substitute for the T-34 bearings purchased in April 2012. They anticipated delivery to FRCSW in July 2013, but in early May they learned the contractor could not perform. Then, on 13 May 2013, NAVAIR personnel informed us that they have identified another domestic source for the alternate T-34 bearing. Pending receipt of a waiver or identification of domestic sources for the other bearings FRCSW needs, FRCSW will refurbish and reinstall bearings in the actuators it overhauls. In April 2013, a contractor successfully refurbished nine bearings and FRCSW installed them in T-44 actuators awaiting overhaul.⁵ On 30 May 2013, an attorney in the Office of the Assistant Secretary of the Navy for Research, Development and Acquisition (OASN (RD&A)) informed us that the most recent NAVAIR research also demonstrates that the alternate bearing was available for purchase in April 2012. Consequently, SECNAV will not waive the requirement for the April 2012 contract.

⁴ DLAA NI's name recently changed to DLA Aviation, San Diego.

⁵ We obtained a legal opinion that indicates the Government Accountability Office would not object to the use of bearings purchased in violation of the Anti-Deficiency Act (ADA) and already installed in the aircraft in the event SECNAV declines to grant a waiver.

10. We also identified one 2011 FLC SD and two 2012 DLAA NI purchases of foreign-made bearings on behalf of FRCSW for which it requested no waivers. FLC SD added a request for a waiver on the 2011 contract to its earlier request, but the NAVAIR research also demonstrates the alternate bearing was available in July 2011. Therefore, SECNAV will not waive the requirement for the July 2011 contract, either. We referred the DLAA NI transactions to the DLA Inspector General (IG) for review and action it deems appropriate.⁶ The DLA IG requested that the Defense Criminal Investigative Service (DCIS), a component of the Department of Defense IG, also review Complainants' safety concerns. On 14 May 2013, we learned that DCIS reviewed the evidence we obtained and interviewed several Navy and DLA personnel before also concluding there are no safety concerns.

11. The DLAA NI CO informed us that as of 7 May 2013, FRCSW had 21 T-34 actuators in-house for work and seven of them were awaiting receipt of the P/N 5201KD bearing used in that component. FRCSW also had 24 T-44 actuators in-house and 21 of them were awaiting receipt of either, or both, P/N EA 50-380043 (FRCSW needed 21 as of 7 May) or P/N 50-380044 (FRCSW needed five as of 7 May). No T-34 or T-44 aircraft are out of service due to the lack of actuators at this time. However, unless FRCSW obtains additional bearings for the T-34, NAVAIR projects that seven aircraft will go out of service in June, seven more will become unavailable in August, and four more will go out of service in September, for a total of 22 aircraft taken out of service in FY 2013. After the start of the new fiscal year, 11 more aircraft will be taken out of service between October and December if bearings remain unavailable for the overhaul effort. To keep the T-44 flying, FRCSW is planning to purchase old U.S.-made bearings that it will test for suitability because of their age to meet its need for one type of bearing. For the other type, FRCSW plans to refurbish and reinstall bearings it removes from the actuators when they arrive for their overhaul.

Information Leading to the OSC Tasking

12. In its tasking letter, OSC identified two Complainants. Mr. Martin Braeunig was a FRCSW Quality Assurance (QA) Specialist (QAS) assigned to verify Artisan work on the trainer aircraft production line. He retired in January 2013 after more than 38

⁶ We were told that FRCSW has already used the bearings DLAA NI obtained. At the end of April, we learned that DLAA NI purchased these bearings with a FLC SD purchase card, and in May, the DLA IG identified a December 2011 and a January 2012 purchase by DLAA NI personnel using DON purchase card.

years of federal service. Mr. Victor Juarez, another FRCSW QAS, was Complainant's Union Representative. In the tasking letter, OSC said both Complainants consent to the public release of their names. In this report, we will refer to Mr. Braeunig as "Complainant" and Mr. Juarez as the "Second Complainant."

13. The role of a QAS is to provide a level of assurance that proper steps were conducted during all phases of maintenance performed on FRCSW production lines. To provide that QA effort, QAS personnel perform, administer, monitor, and review maintenance processes and practices with the goal of performing the highest quality work.

14. While performing QAS duties for the T-34/T-44 production line, Complainant observed that bearings used in actuators arriving from the field were stamped with the words "Japan" or "China." This led him to question their use, and he began conducting his own research into the procurement and use of foreign-made bearings on military equipment.

15. In his letter of complaint to OSC, Complainant explained that the bearings at issue in this investigation are used in the T-34/T-44 landing gear actuator component of the landing gear assemblies that FRCSW employees overhaul. He went on to explain that there are ball bearings inside the actuators that must be removed and replaced with new bearings during the overhaul process. These bearings are the ones of concern to the Complainants, as they allege the bearings are foreign-made and thus were purchased in violation of U.S. law and regulation. Complainants also allege that foreign-made bearings are more prone to corrosion than bearings made domestically, that is, made in the U.S. or Canada. OSC provided the following summary of the Complainant's allegations:

In brief, Mr. Braeunig and Mr. Juarez allege that the Navy knowingly purchased bearings for use on Navy aircraft from a Japanese supplier, and that:

- such purchase is a violation of the Buy America Act and the Defense Federal Acquisition Regulation Supplement (DFARS); and
- the purchased bearings are prone to corrosion and thus pose a threat to the safety of the public.

16. After reviewing the complaint, OSC concluded that there is a substantial likelihood that Complainants' information may disclose gross mismanagement and a substantial and specific danger to public safety.

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Description of the Conduct of the Investigation

17. SECNAV referred the OSC tasking letter, dated 13 November 2012, to the Office of the Naval Inspector General (NAVINSGEN) for investigation. NAVINSGEN assigned case number 201203885 to the matter and forwarded the complaint to the NAVAIR Inspector General (IG) on 20 November 2012, directing the NAVAIR IG to conduct an investigation with collaboration and support from the IG at Naval Supply Systems Command (NAVSUP).

18. The NAVAIR IG, the NAVAIR IG Chief Investigator, and a representative of the NAVSUP IG (hereafter to be referred to as "the NAVAIR IG team"), conducted interviews, collected documents, collaborated with Subject Matter Experts (SMEs), and drafted a report of investigation. During its inquiry, the NAVAIR IG team conducted 22 formal interviews of complainants, subjects and witnesses, and reviewed hundreds of documents.

19. The NAVAIR IG team conducted interviews at FRCSW during the weeks of 3 December 2012, 17 December 2012, and 18 February 2013 to address the alleged violation of federal law and regulations, gross mismanagement, misconduct, and potential risk to safety raised by this case. The interviews did not identify any safety issues, but did confirm that the foreign-made bearing purchases violated applicable law and regulations. The investigators also learned that FRCSW had used some of the bearings, purchased under an April 2012 FLC SD contract, to overhaul T-34 landing gear actuators and had returned them to the fleet for installation in aircraft.

20. While conducting interviews at FRCSW during the week of 17 December 2012, the NAVAIR IG team collected 12 samples of bearings from the "supply" of ball bearings for use on the T-34/T-44 overhaul production line. These samples represented a minimum of three each of the different sources of ball bearings at issue in this case that FRCSW has used in the T-34 and the T-44 landing gear actuators. Thus, the bearing samples were manufactured in Japan (those specifically mentioned in the OSC tasking letter), in China (not mentioned in the OSC tasking letter but depicted in photographs Complainants provided with their complaint to OSC), and in the United States (obtained from old surplus stock to compare with the foreign-made bearings). The NAVAIR IG team hand carried these bearings from FRCSW to NAVAIR Headquarters in Patuxent River, Maryland, and submitted them to an engineering analysis to verify their suitability in terms of safety; fit, form and function; metal qualities; and propensity to corrode.

21. A NAVAIR Engineering team, NAVAIR 4.3.5.4 (Mechanical Systems-Airframe Bearings), conducted the engineering analysis on the sample ball bearings. The NAVAIR IG selected this team because it is the qualifying activity for all airframe⁷ bearings throughout DoD. As the qualifying activity for DoD, NAVAIR 4.3.5.4 is responsible for certifying all airframe bearings that get placed on a Quality Parts List (QPL).⁸ The NAVAIR 4.3.5.4 certification process involves testing a manufacturer's ball bearings and visiting the manufacturing site to conduct a QA audit of the entire process from beginning to end. Under appropriate circumstances, the NAVAIR Engineering team will visit manufacturing sites in foreign countries.

22. In order to compare Naval Safety Center data with the two civilian aviation incident reports that Complainants included in the complaint to OSC, the NAVAIR IG team asked the Naval Safety Center Aviation Programs Department to provide all naval aircraft mishap and hazard reports involving problems with raising or lowering T-34/T-44 landing gear. The Safety Center reported it had no reports of that nature.

23. The NAVAIR IG team returned to FRCSW during 18-21 February 2013 to conduct additional interviews, collect additional documentation, and to visit the supply facilities that support FRCSW, FLC SD, and DLAA NI. While there, the NAVAIR IG team took an "eyes-on" tour of the T-34/T-44 overhaul production line to witness processes involving ball bearings.

24. Investigators and SMEs reviewed interviews and documents obtained during this investigation for flight safety issues, but did not identify any matters of concern.

Summary of Evidence Obtained During Investigation

Background

25. FRCSW is a Department of the Navy (DON) organic industrial facilities command. FRCSW maintains, repairs, and overhauls

⁷ Airframe - airframe refers to the structural body of the aircraft and its associated systems. It does not include propulsion bearings used in the engines or related systems. In addition to the ball bearings at issue in this case, airframe bearings include lined or Teflon coated bearings, roller element bearings, needle bearings, and elastomeric bearings.

⁸ A QPL is a list of a manufacturer's parts that have met an industry-wide agreed minimum quality standard. QPLs are used by commercial aviation companies and DoD.

Navy, Marine Corps, and Joint Forces aircraft and aircraft-related systems. In the summer of 2010, the NAVAIR trainer aircraft program manager decided to transfer to FRCSW some trainer overhaul work that had been conducted under a contract with L-3 Communications. For FRCSW, the new business involved the overhaul of landing gear components used in two different types of training aircraft; the single engine trainer designated as the T-34C Mentor and the dual engine trainer designated as the T-44C Pegasus. These aircraft have a similar landing gear configuration consisting of nose, left, and right landing gears. The T-34C uses a single actuator to raise and lower all three landing gears; the T-44C uses three actuators.

26. FRCSW does not have its own supply department and does not purchase the supplies it uses for overhaul work. Instead, DLAA NI and FLC SD work closely with FRCSW and each other to satisfy FRCSW's logistics needs in a convenient and efficient manner. This structure also results from organizational changes that have occurred over the years due to various Base Realignment and Closure Commission (BRAC) initiatives. The following paragraphs provide a more detailed description of each organization.

Description of FRCSW

27. FRCSW is a depot-level aviation maintenance⁹ facility located at Naval Air Station (NAS) North Island, Coronado, California. The Command provides comprehensive quality support to our nation's aviation warfighters through the overhaul, repair, and modification of front line tactical, logistical, fixed- and rotary-wing aircraft and their components. FRCSW has provided naval aviation maintenance support under one name or another since 1919.

28. FRCSW is a Working Capital Fund¹⁰ organization that operates in conformance with the provisions of Title 10, United States, Code, Chapter 146, "Contracting for Performance of Civilian

⁹ Naval Aviation Maintenance is performed at "organizational," "intermediate," and "depot-level" facilities. See 10 U.S.C. § 2460 for a definition of depot-level maintenance and repair. These terms are further defined in the Naval Aviation Maintenance Program (NAMP).

¹⁰ Working Capital Fund -- The United States Navy Working Capital Fund (NWCF) is a branch of the family of United States Department of Defense (DoD) Working Capital Funds. The NWCF is a revolving fund, an account or fund that relies on sales revenue, rather than direct Congressional appropriations to finance its operations. It is intended to generate adequate revenue to cover the full costs of its operations, and to finance the fund's continuing operations without fiscal year limitation.

Commercial or Industrial Type Functions." Pursuant to the provisions of that chapter, FRCSW may compete for work with other federal depot-level repair facilities. Private contractors also may compete for some of the work that FRCSW might otherwise perform. Consequently, time and cost of performance, in addition to quality of work, are important to FRCSW success.

Description of DLAA NI

29. DLAA NI functions as FRCSW's supply department or supply chain manager. It is a detachment of DLA Aviation, a DLA component currently headed by an Air Force Brigadier General. DLA Aviation operates in 18 stateside locations, supporting more than 1,800 major weapon systems and is the U.S. military's integrated materiel manager for more than 1.1 million repair parts and operating supply items. DLA Aviation provides support for all fixed-wing and rotor-wing aircraft, including spares for engines on fighters, bombers, transports and helicopters; all airframe and landing gear parts; flight safety equipment; and propeller systems.

30. DLA Aviation includes detachments located at industrial support activities positioned alongside and partnered with its military customers at the following locations: Robins Air Force Base, Georgia; Tinker AFB, Oklahoma; Hill AFB, Utah; Marine Corps Air Station Cherry Point, North Carolina; NAS Jacksonville, Florida; and Naval Air Station North Island (San Diego), California. DLA Aviation detachments such as DLAA NI are co-located with each FRC they support. Thus, DLAA NI facilities are co-located with FRCSW. DLAA NI may purchase small quantities of supplies using a Government Purchase (Credit) Card. However, under the BRAC transition plan DLA is following, DLAA NI will not have contracting officer authority until 3 June 2013.

31. DLA Aviation, Richmond, Virginia (DLAA Richmond) is staffed with people who specialize in locating bearings for DoD use that are manufactured domestically, and in processing waivers that authorize the use of foreign-made bearings when domestic sources cannot be found. DLAA Richmond has designated a Foreign Bearing Project Officer and routinely provides assistance to other DLA offices and DoD components that are attempting to obtain bearings that comply with the various laws that express a preference for domestic content and impose restrictions on purchasing foreign-made bearings. Information about the DFARS restriction on the purchase of bearings is available on the DLAA Richmond website and includes a copy of DFARS Section 225.7009.

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The website also contains lists of foreign-made products for which the appropriate DLA authority has issued a waiver.

Description of FLC SD

32. FLC SD is a NAVSUP subordinate command with elements that are co-located with FRCSW on North Island or in facilities on Naval Base San Diego (NBSD). It assists DLAA NI to support FRCSW supply requirements and employs contracting officers and lawyers who work at NBSD.

33. FLC SD provides logistics, business, and support services to fleet, shore and industrial commands of the Navy, Marine Corps, Coast Guard, Military Sealift Command, and other joint and allied forces. FLC SD delivers logistics combat capability by teaming with regional partners and customers to provide supply chain management; procurement; contracting and transportation services; technical and customer support; defense fuel products; and the worldwide movement of personal property.

Description of Naval Trainer Aircraft

34. The T-34C's primary mission is to provide initial (called primary) flight training for student military pilots. As a secondary mission, approximately 10 percent of the aircraft provide pilot proficiency and other aircraft support services to the Commander, Naval Air Force, U.S. Atlantic Fleet; the Commander, Naval Air Force, U.S. Pacific Fleet; and the Naval Air Systems Command at installations located throughout the continental United States. The T-34C is based upon the Beechcraft Bonanza single engine civilian aircraft that the DON procured as a commercial-derivative aircraft certified under a Federal Aviation Administration (FAA) Type Certificate. The DON is gradually replacing the T-34C with the T-6 Texan, a completely different aircraft, but still has 192 T-34Cs in use.

35. The T-44C's primary mission is to provide intermediate flight training for student military pilots learning to fly multi-engine aircraft. The DON also uses the aircraft in an operational capacity at various bases around the world. It derives from the Beechcraft King Air family and is part of a line of twin-turboprop aircraft produced by the Beech Aircraft Corporation (now the Beechcraft Division of Hawker Beechcraft). Originally designated the T-44A Pegasus, a total of 61 aircraft were delivered to DON between 1977 and 1980. In August 2006, the DON announced that after 29 years of operation, the T-44A fleet would be upgraded with modernized avionics systems and thereafter designated the T-44C. Throughout its life, the Navy

has operated and commercially supported this aircraft using FAA processes, procedures and certifications. There are 54 T-44Cs still in service.

36. In this report, we refer to the T-34C Mentor and the T-44C Pegasus collectively as the T-34/T-44 or the trainer aircraft.

Transition from Contractor to FRCSW Overhaul

37. When the DON first purchased the T-34/T-44 aircraft, it intended to maintain them under a "commercial for life" program by entering into contracts with companies that would perform all of the work required to support these aircraft throughout their service life. In simplified terms, the management of these aircraft, including maintenance, overhaul using FAA processes, procedures, and certifications, merely required that the DON "pay the bill" to a contractor.

38. In the summer of 2010, the trainer aircraft program manager decided to transfer responsibility for overhauling T-34/T-44 landing gear assemblies from a contractor to FRCSW. Insofar as we have been able to determine, the controversy that led to the OSC tasking letter first arose in April 2011, when Complainant reported during a meeting that he had seen bearings marked with the word "Japan" in T-34 actuators FRCSW was disassembling for overhaul. He questioned whether FRCSW should use foreign-made bearings to overhaul the actuators, raised his concerns with others in the QA Department during meetings, and began researching the topic.

39. During the course of this investigation, the NAVAIR IG team learned that at least one U.S. bearing manufacturer, a major supplier of bearings for military and commercial aircraft, moved its manufacturing operations to Japan in 2006. Thereafter, the incumbent DON T-34/T-44 maintenance contractor's continued purchase and use of these (and other) foreign-made bearings did not violate domestic content laws or regulations because the contractor furnished the bearings to DON as components of larger products and, consequently, DoD was not purchasing bearings directly as end items. The plan for FRCSW to undertake this work, however, was executed in a manner that caused DoD (DLAA NI and/or FLC SD) to purchase bearings as end items rather than as components of larger assemblies such as actuators. This approach to the work led directly to the purchasing violations we identify in this report. With respect to safety concerns, however, it is important to note that the bearings we conclude FLC SD purchased improperly are from the same or similar foreign

sources that the contractor purchased and used to overhaul these trainer aircraft without incident or controversy for years.

Allegation One

That in April 2012, FLC ContOff executed a contract for the purchase of bearings that were not produced in the United States or Canada, in violation of Defense Federal Acquisition Regulation Supplement (DFARS) 225-7009, "Restriction on ball and roller bearings." (Substantiated)

What the Complainants Contend

40. The OSC tasking letter states that the Complainants allege "the Navy" knowingly purchased bearings for use on naval aircraft from a Japanese manufacturer and that such purchase is a violation of the Buy America Act and the Defense Federal Acquisition Regulation Supplement (DFARS). The Complainants explained to OSC that the purchase of foreign-manufactured ball bearings "potentially" violates §§ 10a through 10d of the Buy American Act and DFARS 225-7009-2.¹¹

Findings

Applicable Domestic Content (Buy American) Standards

41. This investigation necessitates a review of two laws that place restrictions on federal government purchases of foreign manufactured material.

42. The first, which is permanent law enacted in 1933 and now codified at 41 U.S.C. §§ 8301-8303 (formerly 41 U.S.C. § 10a), is commonly referred to as the Buy American Act (BAA).¹² Regulations implementing the BAA applicable to all agencies are found in Federal Acquisition Regulation (FAR) Subpart 25.1. Implementing regulations for the DoD appear in Defense Federal Acquisition Regulation Supplement (DFARS) Part 225, Foreign Acquisition, Subpart 225.1, Buy American - Supplies.

¹¹ The cited DFARS provision implements the DoD Appropriations Act. This formulation illustrates and perpetuates the confusion between the Buy American Act and the annual DoD Appropriations Acts, as explained in this section of the report, that led to Appropriations Act violations.

¹² Not to be confused with the Buy America Act, the popular name for a group of domestic content restrictions on funds administered by the Department of Transportation. These laws typically require 100% domestic content. See, for example, 49 U.S.C. § 5323(j).

43. The second law does not appear in the United States Code, but has been enacted almost every year since 1992 as a section (currently 8046) of the annual DoD Appropriations Act. This restriction appears in DFARS Part 225, Subpart 225.70, Authorization Acts, Appropriations Acts, and Other Statutory Restrictions on Foreign Acquisition. DFARS Section 225.7009, Restrictions on ball and roller bearings, which specifically mentions Section 8065 of the Fiscal Year 2002 DoD Appropriations Act, implements this annual DoD Appropriations Act restriction.

44. SME-1, Legislative Attorney, Congressional Research Service (CRS), is responsible for a 25 April 2012 CRS Report to Congress entitled "Domestic Content Legislation: The Buy American Act and Complementary Little Buy American Provisions."¹³ The introductory paragraph to this report states:

Congress has broad authority to place conditions on the purchases made by the federal government or with federal dollars. One of many conditions that it has placed on direct government purchases is a requirement that they be produced in the United States. The most familiar of these requirements is known as the Buy American Act, which is the major domestic preference statute governing procurement by the federal government. The Buy American Act applies to direct purchases by the federal government of more than \$3,000, providing the purchase is consistent with the public interest, the items or services are reasonable in cost, and they are for use in the United States. The act requires that "substantially all" of the acquisition be attributable to American-made components. Regulations have interpreted this requirement to mean that at least 50% of the cost must be attributable to American content.
[underlining added for emphasis]

45. For several years, the DoD Appropriations Act restrictions have appeared in Section 8046. The 2011, 2012, and 2013 Acts state:

SEC. 8046. None of the funds appropriated by this Act may be used for the procurement of ball and roller bearings

¹³ Available online at: <http://www.fas.org/sgp/crs/misc/R42501.pdf>. This article also discusses the Berry Amendment, which is mentioned in some of the correspondence concerning this case. The Berry Amendment does not apply to the bearings purchased directly by FLC SD and DLAA NI as end items. This article does not expressly discuss the restrictions in the DoD Appropriations Acts implemented by DFARS Section 225.7009.

other than those produced by a domestic source and of domestic origin: *Provided*, That the Secretary of the military department responsible for such procurement may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate, that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes: *Provided further*, That this restriction shall not apply to the purchase of "commercial items", as defined by section 4(12) of the Office of Federal Procurement Policy Act, except that the restriction shall apply to ball or roller bearings purchased as end items. [underlining added for emphasis]

46. DFARS 225.7009, Restriction on ball and roller bearings, states:

225.7009-1 Scope.

This section implements Section 8065 of the Fiscal Year 2002 DoD Appropriations Act (Pub. L. 107-117) and the same restriction in subsequent DoD Appropriations acts.

225.7009-2 Restriction.

(a) Do not acquire ball and roller bearings unless—

(1) The bearings are manufactured in the United States or Canada; and

(2) For each ball or roller bearing, the cost of the bearing components manufactured in the United States or Canada exceeds 50 percent of the total cost of the bearing components of that ball or roller bearing.

(b) The restriction at 225.7003-2 may also apply to bearings that are made from specialty metals, such as high carbon chrome steel (bearing steel).

225.7009-3 Exception.

The restriction in 225.7009-2 does not apply to contracts or subcontracts for the acquisition of commercial items, except for commercial ball and roller bearings acquired as end items. [underlining added for emphasis]

225.7009-4 Waiver.

The Secretary of the department responsible for acquisition or, for the Defense Logistics Agency, the Component Acquisition Executive, may waive the restriction in

225.7009-2, on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that--

(a) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7009-5 Contract clause.

Use the clause at 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings, in solicitations and contracts, unless--

(a) The items being acquired are commercial items other than ball or roller bearings acquired as end items; [underlining added for emphasis]

(b) The items being acquired do not contain ball and roller bearings; or

(c) A waiver has been granted in accordance with 225.7009-4. [underlining added for emphasis]

47. The contract clause states:

252.225-7016 Restriction on Acquisition of Ball and Roller Bearings.

As prescribed in [225.7009-5](#), use the following clause:

RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (JUN 2011)

(a) *Definitions.* As used in this clause--

(1) "Bearing components" means the bearing element, retainer, inner race, or outer race.

(2) "Component," other than a bearing component, means any item supplied to the Government as part of an end product or of another component.

(3) "End product" means supplies delivered under a line item of this contract.

(b) Except as provided in paragraph (c) of this clause--

(1) Each ball and roller bearing delivered under this contract shall be manufactured in the United States, its outlying areas, or Canada; and

(2) For each ball or roller bearing, the cost of the bearing components manufactured in the United States, its

outlying areas, or Canada shall exceed 50 percent of the total cost of the bearing components of that ball or roller bearing.

(c) The restriction in paragraph (b) of this clause does not apply to ball or roller bearings that are acquired as-

(1) Commercial components of a noncommercial end product; or

(2) Commercial or noncommercial components of a commercial component of a noncommercial end product.

(d) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection [225.7009-4](#) of the Defense Federal Acquisition Regulation Supplement.

(e) If this contract includes DFARS clause [252.225-7009](#), Restriction on Acquisition of Certain Articles Containing Specialty Metals, all bearings that contain specialty metals, as defined in that clause, must meet the requirements of that clause.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts, except those for-

(1) Commercial items; or

(2) Items that do not contain ball or roller bearings.

48. There is no micro-purchase exception for the ball bearing restriction in the DoD Appropriation Acts or DFARS 225.7009. Consequently, a foreign (non-U.S. or Canadian) manufactured ball bearing may only be purchased as an end item, for use by DoD, if it has been granted a waiver in accordance with section 225.7009-4 of the DFARS, even for purchases in an amount that is less than \$3,000.00.

49. Since there is no dollar threshold for bearing purchases, DFARS 225.7009-5 instructs contracting officers to include clause 252.225-7016 in solicitations and contracts, unless (1) there is an applicable waiver; (2) the items to be purchased do not include ball or roller bearings; or (3) the purchase is for commercial items other than bearings to be obtained as end items. Absent those limited exceptions, the DFARS provisions direct acquisition personnel to include the clause in all solicitations and contracts for bearings. When the clause is included in a solicitation and resulting contract, then, as a matter of contract law, the contractor may not deliver foreign-made bearings unless it requests and obtains a waiver; the

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clause places responsibility to provide domestic bearings or request a waiver, with supporting justification, upon the contractor. In the absence of the clause, however, there is no contractual non-compliance and, thus, no remedy against the contractor if it delivers foreign bearings. Moreover, as a practical matter, if the contracting officer does not: (1) determine the availability of domestic bearings; and (2) request a waiver in advance of issuing a solicitation when a sufficient quantity of domestic bearings is not available, delays in purchasing the bearings are likely to result.

50. SME-2 is a Senior Procurement Analyst in the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics (OUSD (AT&L)). She is assigned to the Defense Procurement and Acquisition Policy Directorate (DPAP). DPAP serves as the principal advisor to the USD (AT&L) and the Defense Acquisition Board on acquisition and procurement strategies for all major weapon systems programs, major automated information systems programs, and services acquisitions. DPAP is responsible for the Defense Acquisition Regulations System (DARS), which develops and maintains acquisition rules and guidance to facilitate the acquisition of goods and services DoD requires to accomplish its mission.

51. DPAP utilizes the DARS office to create and maintain the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS). SMD-2 is the Deputy Director of the Defense Acquisition Regulation Council (DARC). In addition to her other duties, SME-2 sits on the DARC and is a DARC case manager specializing in the areas of ethics and international contracting issues. She chairs the DARC International Acquisition Committee, and writes regulations pertaining to foreign acquisitions.

52. SME-2 provided the following information about the DFARS provisions implementing the various DoD Appropriations Act restrictions:

Except for the Berry Amendment restrictions on food, clothing, textiles, fibers, etc., which originated in 1941, but was subsequently codified at 10 U.S.C. 2533a, the earliest domestic source restrictions in the DoD appropriations acts started in FY 1988. In addition to DoD Appropriations Act restrictions, 10 U.S.C. 2534 restricted acquisition of foreign ball and roller bearings and components from 1995 through October 1, 2005.

There is a long history of restrictions on the acquisition of foreign bearings in the Defense Federal Acquisition Regulation Supplement (DFARS), even before statutory restrictions were imposed. The first restrictions on "antifriction bearings" were introduced into the DFARS on August 1, 1988 in subpart 8.79, as a matter of policy. The associated clause was located at 52.208-7006, Required Sources for Antifriction Bearings. The restriction on miniature and instrument ball bearings goes all the way back to November 30, 1971, located in the Armed Services Procurement Regulation at ASPR 1-315.3 (clause at 7-104.38).

From December 1991 through April 1993, the restrictions on antifriction bearing and bearing components were located at DFARS 225.7102 (clause at 252.225-7025, Foreign Source Restrictions. Subpart 25.71 is for policy restrictions.

When the requirement became statutory, the coverage was moved to DFARS 225.7019 in DAC 91-5, April 30, 1989 (clause at 252.225-7016, Restriction on Acquisition of Antifriction Bearings).

In the August 1998 edition everything in DFARS part 225 and the associated clauses was shuffled around due to a general rewrite of the entire part. Section 225.7009 became "Restrictions on ball and roller bearings," and the associated clause was at 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings.

The last substantive change to the coverage on ball and roller bearings was to implement the expiration of 10 U.S.C. 2534. The final rule under DFARS Case 2006-D029 was published in the Federal Register on 12/8/2010 (75 FR 76297).

The reason the current text cites to the FY 2002 DoD Appropriations Act is because there have been no changes to the restrictions on acquisitions of ball and roller bearings in the subsequent DoD appropriations acts. Section 8065 exempts purchases of commercial items, except that the restriction shall apply to ball or roller bearings purchased as end items.

Description of Bearings Required for T-34/T-44 Overhaul

53. While there are a number of bearings that are used during the FRCSW overhaul of all of the T-34/T-44 landing gear components,

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only four different bearings are of concern in this case because they were purchased as end items by DoD, are foreign-made, and there is no waiver authorizing their purchase. All are used in landing gear actuators.

54. Part Number (P/N) 5201KD, is a double row ball bearing used in the single T-34 actuator that controls all three of the landing gears. The April 2012 contract that is the focus of this investigation purchased this bearing. For years the bearing had been manufactured by the Timken Company, of Canton, Ohio, whose founder conceived the roller bearing over 100 years ago. Timken moved production of this bearing from the U.S. to Japan in 2006. This particular bearing has been used in T-34 actuators for many years and is the same bearing that contractors used before FRCSW took over the work.¹⁴

55. P/N 50-380043 is one of two single row ball bearings used in each of the three T-44 actuators. While not the focus of our inquiry, the investigators obtained bearings samples with markings indicating they were manufactured in Japan and China. FLC SD executed a contract for the purchase of these bearings in July 2011. That contract also provided for the purchase of bearings, P/N 5201KD, for use in T-34 actuators.

56. P/N EH50-380043 is a single row ball bearing that FAA authorizes as an acceptable substitute for the P/N 50-380043 used in the T-44. DLAA NI purchased a number of these bearings for FRCSW in May and October 2012. These bearings appear to have been manufactured in China. We identified these two contract actions in our referral to the DLA IG.¹⁵

57. P/N 50-380044 is the other single row ball bearing used in each of the three T-44 actuators.¹⁶

¹⁴ As of 8 May 2013, DLAA NI had 22 of these bearings that FRCSW would have used had SECNAV granted the FLC SD waiver request. PMA-273 has located and purchased 12 old domestically manufactured bearings that will require testing before they may be used. However, on 13 May 2014, PMA-273 informed us it has identified a domestic source of an acceptable alternate to the T-34 bearing. Consequently, PMA-273 believes it will not need to request a waiver to purchase more T-34 bearings.

¹⁵ DLAA NI does not have any of these bearings that were made in the U.S., but earlier this year DLA identified a domestic source and awarded a contract to purchase 100 with a March 2014 scheduled arrival date. To bridge the gap, DON purchased 45 old U.S.-made bearings that require testing before use.

¹⁶ DLAA NI does not have any of these bearings. PMA-273 has identified another source of old domestic bearings that will require testing before use.

58. As of 29 April 2013, PMA-273 had given FRCSW 56 T-44 landing gear components for overhaul, each with an actuator, and FRCSW had overhauled and returned 29 of them. PMA-273 also has given FRCSW 87 T-34 actuators for overhaul, and FRCSW has overhauled and returned 30 of them. FRCSW has stopped overhauling actuators for which it has only foreign-made bearings, pending a decision on a SECNAV waiver¹⁷, the receipt of bearings that have been manufactured in the U.S. or Canada, or the receipt of bearings that may be refurbished under an existing contract.

FLC SD Requirement for Foreign Purchase Legal Review

59. NAVSUPINST 5801.1, Referral of Contractual Matters to the Office of Counsel, dated 8 September 2009, establishes uniform policy and procedures within NAVSUP and its subordinate commands, including FLC SD, for referring contract issues to Counsel for legal review. It provide a sample memo for submitting requests for legal review and requires that a file, which includes supporting materials to assist the review effort, accompany each request. It also requires documentation of the contract file to demonstrate accomplishment of the legal review.

60. Paragraph 5, Action, subparagraph a, Pre-award Contractual Matters, requires that before issuing any solicitation that includes the acquisition of foreign-made supplies within the U.S., the matter be submitted to Counsel for review "as to form and legality, for advice, and for other action, as appropriate."

April 2012 Foreign Bearing Purchase For T-34

61. On 6 April 2012, FLC ContOff drafted and signed Contract/Purchase Order Agreement Number N00244-12-P-0530 for the purchase of 47 P/N 5201KD Double Row Ball Bearings, which are used in the T-34 actuators, at a unit price of \$52.00. The total contract price was \$2,524.00, which included an \$80.00 overnight shipping charge. The contract was awarded to Global Parts, INC, of Augusta, Kansas, and paid using a Government Purchase Card. The purchase order did not mention the restrictions on the purchase of ball bearings contained in DFARS 225-7009 or include the language in DFARS 252.225-7016, which is required by DFARS 225-7009-5.

62. During his 18 December 2012 interview, FLC ContOff acknowledged that as a contracting officer, his job requires him to look at provisions of the FAR, DFARS and the BAA. He said

¹⁷ As noted, SECNAV will not grant a waiver request.

that he looked at the restrictions pertaining to ball bearings. He explained that: "Well bearings is that term we're all supposed to be familiar with because there's a lot of - there's certain items that are restricted." FLC ContOff stated that he did not seek legal advice before signing the 6 April 2012 contract. He said he was aware of FLC Atty's opinion that the micro-purchase exception applied, as set forth in her 26 March 2012 email to DLAA-1 that contained the single sentence "Keep it under \$3000 and we do not have to worry about Buy American Act either!" NAVSUPINST 5801.1 required FLC ContOff refer the acquisition to counsel because foreign-made supplies were involved, but he did not submit the contract to the FLC SD legal office in the manner required by NAVSUPINST 5801.1. However, FLC ContOff was aware of FLC Atty's email to DLAA-1 at that time.

63. When investigators asked FLC ContOff if he had any conversations in which he sought advice from anyone in the FLC SD legal office he said:

I believe I probably had a brief discussion during that time in March with [FLC Atty] that there was - you know, bearings, here's what - you know, I don't believe I was privy to the detailed discussions on it, but I do - I was made aware of it.

64. When the investigators asked him about any discussions about the legality of a bearing purchase, or any restrictions on bearing purchases, he said:

Well, there again, what it came down to was the analysis of the type of bearing and the dollar value. [FLC Atty] - you know, it was under the micro-purchase threshold. So, I guess after all the discussion was said and done and discussed, okay, this was a micro-purchase, we're not - Buy American is not applicable. That's the route we went, you know. . . .

But all in all, the micro-purchase threshold sort of won out and the interpretation after reading this information was, okay, we're okay with the micro to buy them. And that's kind of how we proceeded.

65. When FLC ContOff drafted and signed the purchase contract for the Japanese manufactured ball bearings on 6 April 2012, no one

had submitted or granted a waiver request in accordance with DFARS 225.7009-4.¹⁸

66. In her interview on 4 December 2012, FLC Atty candidly admitted that she mistakenly concluded that the Buy American Act exception for purchase under \$3,000.00 also applied to the DoD Appropriations Act restrictions. Ultimately, her incorrect interpretation was reflected in an email, dated 26 March 2012, she sent to DLAA-1 advising him to, "Keep it under \$3000 and we do not have to worry about Buy American Act either!" In her testimony, she stated that this email was a follow-up response to a phone conversation that she and DLAA-1 were engaged in just prior to her sending the email on the subject of purchasing the bearings. She also said she expected that she would get an opportunity to review the matter when the contract came to her office for legal review, but, as mentioned previously, FLC ContOff was aware of FLC Atty's email to DLAA-1 and did not seek legal advice directly from her.

Other Foreign Bearing Purchases

67. On 20 February 2013, while at FRCSW and DLAA NI obtaining documentation for the investigation, the NAVAIR IG team learned that FLC ContOff also had executed a 29 July 2011 purchase order contract¹⁹ in the amount of \$89,252.99 to obtain parts necessary to support the T-34/T-44 landing gear overhaul production line. This contract included 82 line items. Each line item is considered an "end item" purchase for the purpose of DoD Appropriations Act bearing restrictions. Line item #0018 was for 26 P/N 50-380043 ball bearings used in the T-44 actuators. Line item #0022 was for 41 P/N 50-380044 ball bearings, which also used in T-44 actuators. Line item #0023 was for five P/N 5201KD ball bearings, used in the T-34 actuators (the same type of bearing FLC SD purchased under the April 2012 contract). This contract did not include any of the required DFARS clauses pertaining to the purchase of bearings.

68. The investigators also learned that on 16 November 2012, DON and the contractor amended this contract by mutual agreement in order to cancel four line items, including line item #0018 for

¹⁸ We provide more detail, including what happened after the bearings arrived at FRCSW in May 2012 in Allegation Three.

¹⁹ ORDER FOR SUPPLIES OR SERVICE, contract/purchase order agreement no. N00244-11-P-1303, issued by NAVSUP FLC SD to Brighton Cromwell, LLC, Randolph, NJ. The Complainants did not mention this contract to OSC and it is not included in the OSC Tasker.

26 P/N 50-380043 bearings used in the T-44.²⁰ The other line item cancellations were for parts not associated with this case. We understand that the five T-34 bearings purchased under this contract, made in Japan, have been installed in T-34 actuators, but we cannot confirm this without locating the actuators and disassembling them.

69. In his second interview, on 20 February 2013, FLC ContOff stated that he drafted and signed the 29 July 2011 contract and acknowledged that this contract did not contain the required restrictions and clauses pertaining to bearing purchases. He did not recall seeking any legal advice about bearing restrictions prior to executing this contract. As previously noted, NAVSUPINST 5801.1 requires that he obtain such a review.

70. On 4 March 2013, the NAVAIR IG investigative team discovered that DLAA NI had made two separate Government Credit Card purchases for ball bearings that FRCSW needed to overhaul T-34/T-44 actuators. The first purchase, made on 7 May 2012, in the amount of \$2,192.69, was for 29 P/N EH50-380043 bearings, (for use in T-44s), The second, made on 3 October 2012, in the amount of \$2,980.00, was for 20 more P/N EH50-380043 bearings.²¹

Discussion and Analysis

71. In order for DoD to directly purchase foreign-made bearings, it must comply with the provisions of both the BAA and the DoD Appropriations Act for the applicable year. Thus, the restrictions on the purchase of foreign-made bearings contained in those laws must be considered separately.

72. For purchases above the micro-purchase threshold, the BAA requires that the Government procure domestic end products unless one of the Act's exceptions apply. The exceptions, which are set forth at FAR Subpart 25.103, include public interest, non-availability of domestic products, unreasonable cost of

²⁰ We understand the contractor, Brighton Cromwell LLC, requested this line item be cancelled because it was not able to find a U.S. manufacturer for these bearings.

²¹ NAVINSGEN referred these purchases to the DLA IG as a matter under her cognizance, since DON does not have the authority to investigate DLA transactions or address potential DLA ADA deficiencies. In May 2013, however, DLA IT informed us that DLAA NI used FLC SD purchase cards for these transactions and identified two more such transactions, one in January 2012 and one in December 2011. NAVINSGEN and DLA IG will explore these issues, which may lead to the discovery of additional potential ADA violations, as a separate matter.

domestic products, the purchase of items for resale, and purchases of commercial item information technology. The micro-purchase threshold for supplies is \$3,000.00 (see definitions at FAR 2.101). In this case, the BAA was not violated because the April 2012 contract written for the Japanese ball bearings was in the total amount of \$2,524.00, including shipping charges.

73. There is no micro-purchase (minimum purchase price) exception for the bearing restriction contained in the annual DoD Appropriations Acts, as implemented at DFARS Section 225.7009. A foreign (non-U.S. or Canadian) made bearing may only be purchased as an end item, for use by DoD, if SECNAV has granted a waiver in accordance with the provisions of the DoD Appropriations Act, as described in DFARS Section 225.7009-4.

74. Thus, although the three purchase card transactions (two by DLAA NI and one by FLC SD) did not violate the BAA because none of those purchase exceeded \$3,000.00, they did violate the DoD Appropriations Acts, since neither DLA nor DON obtained the requisite waivers.

75. All of the foreign-made bearings purchased under the 2011 FLC SD contract are treated as end items or "end products" because they were listed as line items in the contract. Since no waivers were issued for this contract, this action also results in a violation of the DoD Appropriations Act that has the potential to create an ADA violation.

76. The NAVAIR IG team did not discover any evidence indicating that anyone associated with the procurement of the foreign manufactured bearings discussed in this report intended to circumvent applicable laws or regulations. The facts show that FLC ContOff and FLC Atty focused on the BAA restriction, which does not apply to purchases under \$3,000.00, and concluded it was not necessary to obtain a waiver. They either overlooked the DoD Appropriations Act restriction, which does apply to purchases under \$3000, or, as FLC Atty stated on several occasions, mistakenly believed there was a similar provision in the DoD Appropriations Act and implementing regulations that made the restriction inapplicable to purchases of \$3,000.00 or less.

77. The ultimate responsibility for the contracting error lies with FLC ContOff, the contracting officer who drafted and signed the 2011 and 2012 contracts. Under NAVSUPINST 5801.1, he had a duty to formally submit both contracts for legal review. However, the fact FLC ContOff was aware of FLC Atty's email to DLAA-1 should be considered when assessing his actions in April

2012, and FLC ContOff may not have realized the July 2011 contract would require the purchase of foreign-made bearings.

78. In both his 18 December 2012 and 20 February 2013 interviews, FLC ContOff acknowledged that he was responsible for looking up applicable restrictions and clauses and applying them properly to any contract that he drafted and signed. In his first interview, he stated that he did look at the restrictions. He said that he did not write many contracts for ball bearings, but recognized that contracting officers are supposed to be sensitive to bearing purchases because there are many restrictions associated with them.

79. During his 18 December 2012 interview, FLC ContOff conceded that he did not seek legal advice before signing the 6 April 2012 contract, as required by NAVSUPINST 5801.1. He said he was aware of FLC Atty's opinion that the micro-purchase exception applied, as set forth in her 26 March 2012 email to DLAA-1 that contained the single sentence "Keep it under \$3000 and we do not have to worry about Buy American Act either!" However, he conceded that nothing prevented him from taking the opportunity to seek her advice on this specific contract and clarify her position on purchasing the Japanese ball bearings.

80. FLC Atty's mistaken interpretation of the law and regulation, also played an important role in the 6 April 2012 contract for the Japanese bearings. Her misinterpretation of the DoD Appropriations Act and DFARS Subpart 225-7009 restrictions led her to incorrectly advise DLAA NI that if the purchase of ball bearings remained below a certain threshold, the purchase would be appropriate. In her interview on 4 December 2012, she admitted that she adopted the mindset early-on that there was a threshold for application of the rule, an exception for micro-purchases. FLC Atty anticipated she would have an opportunity to do a legal review of the contract before award. While she may have realized there is no micro-purchase threshold for the DoD Appropriations Act if she had taken more time to review the regulations than she did on 26 March 2012, we cannot say whether she would have done so.

81. We treat the ADA preliminary inquiry findings and the request that SECNAV grant a waiver as independent confirmation of our conclusion for this allegation.

Conclusion

82. The allegation that in April 2012, FLC ContOff, Contracting Officer, FLC SD, executed a contract for the purchase of

bearings that were not produced in the United States or Canada, in violation of Defense Federal Acquisition Regulation Supplement (DFARS) 225-7009, "Restriction on ball and roller bearings," is substantiated.

Recommended Actions

83. We recommend that NAVSUP ensure all Purchasing Agents and Contracting Officers at NAVSUP and subordinate commands receive training on items with statutory or regulatory restrictions, such as ball bearings. The BAA, DoD Appropriations Acts, and their implementing regulations pertaining to bearings are examples of topics that should be covered in such training.

84. We recommend that NAVSUP determine whether any of the DLAA NI purchase card transactions (December 2011, January 2012, May 2012, or October 2012) were made using FLC SD purchase cards and money and, consequently, should be addressed by the DON rather than DLA.

85. We recommend that FLC SD management take appropriate action to hold FLC ContOff accountable for drafting and signing two procurement contracts for foreign-made bearings without including the required restrictions and clauses.

86. We recommend that ASN (RD&A) consider whether to propose any changes in DFARS organization or language that may enable someone who does not routinely deal with the purchase of foreign-made items to more easily identify all applicable restrictions and understand the differences in their requirements. For example, the error that occurred in this case might have been avoided if DFARS Section 225.7009 included language expressly stating that the restriction applies to purchases of any amount and the reasonableness of the cost of a domestic bearing is not a factor to consider when deciding whether to purchase a foreign-made bearing.

Actions Planned or Taken

87. Shortly after learning of the OSC Tasker, FLC Atty and Attorneys in the NAVSUP Office of Counsel concluded the foreign bearing purchase resulting from the April 2012 contract violated the applicable year DoD Appropriations Act and the implementing DFARS provisions.

88. Consequently, the FLC SD Commanding Officer (CO) sent a "flash report" advising of a potential ADA violation to the Assistant Secretary of the Navy, Financial Management and

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Comptroller (ASN (FM&C)), via his NAVSUP chain of command. The flash report led to the conduct of a preliminary inquiry that concluded there would be an ADA violation in the absence of a SECNAV waiver, which SECNAV may issue after the fact. Granting the waiver would have the effect of curing the ADA deficiency. Because SECNAV will not grant a waiver, we anticipate ASN (FM&C) will move the ADA inquiry to the next step, which would be to refer the preliminary inquiry to the Office of the Secretary of Defense for a decision on conducting a full investigation.

89. The FLC CO also initiated a request that SECNAV waive the prohibition on the direct end item purchase of foreign-made bearings under the April 2012 contract due to the non-availability of bearings manufactured in the U.S. or Canada. This request went to SECNAV via the FLC SD NAVSUP chain of command and the Assistant Secretary of the Navy, Research Development and Acquisition (ASN (RD&A)). Because PMA-273 identified, in May 2013, a suitable domestically manufactured alternate bearing that also was available in 2011 and 2012, SECNAV will not grant a waiver for that contract.

90. After learning of the 2011 FLC SD contract, the FLC SD CO also reported the potential ADA violation associated with that contract and requested a SECNAV waiver for foreign-made bearings obtained under that contract. Because SECNAV will not grant a waiver for that contract, either, we anticipate that ASN (FM&C) will direct an ADA preliminary inquiry for that contract, and any of the DLAA NI foreign-bearings purchases made with DON purchase cards. In addition, we anticipate that ASN (FM&C) will forward the preliminary inquiry it has already completed to the Office of the Secretary of Defense for a decision on the need to conduct a full ADA investigation.

91. In early 2013, FLC Atty conducted two training sessions for FLC SD personnel on a number of contracting and legal issues, to include the rules on foreign purchase and the requirements for obtaining legal review.

92. Upon learning of the two 2012 DLA purchase orders that resulted in the purchase of foreign-made end-item bearings, we referred this matter to the DLA IG because DON does not have the authority to investigate those DLA actions or recommend corrective action, and SECNAV does not have the authority to grant a waiver for those contract actions. Now that DLA IG confirmed that DLA personnel used DON purchase cards for these (and two additional) transactions, NAVINSGEN and DLA IG will undertake further inquiries jointly.

93. The DLA IG has agreed to work with NAVINSGEN to examine the issues pertaining to the DLAA NI use of DON purchase cards.. In addition, pursuant to a support agreement with the DCIS, the DLA IG requested that DCIS perform its own review of the safety issues the Complainants raise. NAVINSGEN provided the DLA IG and the DCIS Special Agent documents that may be pertinent to their efforts. The DCIS effort, which concluded there is no safety issue, is discussed in Allegation Two.

94. FLC Atty received a letter of caution. Action to hold FLC ContOff accountable is under consideration.

Allegation Two

That the foreign-made bearings FRCSW Artisans used to overhaul T-34/T-44 landing gear actuators in 2012 are prone to corrosion that creates a danger to public health and safety. (not substantiated)

What the Complainant Contends

95. The OSC tasking letter states that the Complainant contended foreign-made bearings pose an additional safety hazard to pilots and the public. Complainant alleged that subsequent to their purchase, QA personnel became aware that the foreign-made bearings have an ongoing corrosion issue and many bearings arrive with visible corrosion defects. Complainant explained that corrosion may create friction that causes the bearings to fail, resulting in loose parts that can jam the gears and prevent the landing gear from fully extending. While FRCSW does not install bearings with obvious defects, Complainant contends there is an ongoing concern that the foreign-made bearings are not safe for use on naval aircraft.

96. The OSC tasking letter says Complainant identified two recent incidents in which aircraft experienced difficulty lowering their landing gear due to faulty bearings that were similar to those FRCSW is using on the T-34/T-44 aircraft. He did tell OSC, however, that neither incident involved naval aircraft.

Findings

Bearings From All Sources Exhibit Corrosion

97. The foreign-made bearings at issue in this case come from the same sources used by the contractor who repaired and overhauled

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the T-34/T-44 landing gear components before FRCSW assumed responsibility for this work.

98. The bearings FRCSW obtained for the T-34/T-44 landing gear overhaul program came from three different sources: the U.S., Japan, and China. The U.S. bearings consisted of previously purchased old surplus stock, some of which were manufactured in the 1980s.

99. As reported by the FRCSW Production Line and tracked by the FRCSW Materials Lab, some of the ball bearings manufactured in each country arrived at FRCSW with signs of corrosion.

FRCSW Efforts to Address Corrosion

100. The Defense Supply Center, Richmond, Virginia (DSCR), serves as the DLA aviation demand and supply chain manager. In that capacity, it publishes Military Detail Specification 197K (MIL-DTL-197K), entitled Packaging of Bearings, Associated Parts, and Subassemblies. The purpose of this document is to provide "the detailed preservation and packaging requirements for bearings, associated parts, and subassemblies." It addresses cleaning, drying, preservation, packaging, and packaging marking requirements. It is to be referenced in any contract for the acquisition of bearings, which should specify the specific preservation and packaging requirements described in MIL-DTL-197K to which the contractor must adhere.

101. NAVAIR Manual 01-1A-503, "Maintenance Of Aeronautical Antifriction Bearings," incorporates MIL-DTL-197K by reference. Examples provided by NAVAIR subject matter experts include:

2.1 The Preservation section, 10-64, states in para. e that "Bearings given Method IB-2 protection in accordance with Specification MIL-DTL-197 shall be coated with hot dip preservative, Specification MIL-C-11796 Class 3."

2.2 The Facilities section, "general" subsection, 11-5, states "Environmental control of the preservation and packaging area shall be maintained in accordance with instructions contained in Section XV and the latest revision to Specification MIL-DTL-197, "Packaging of Bearings, Associated Parts, and Sub-Assemblies". . ."

2.3 The Methods of Preservation section, "general" subsection, 11-25, states "Bearings packaged for return to Supply, or for return to a bearing manufacturer, shall be packaged in accordance with Specification MIL-DTL-197 and applicable requirements contained in this manual. . ."

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2.4 Figure 11-1 details "Approved Methods of Preservation"
". . .under Specification MIL-DTL-197."

102. FRCSW adheres to the requirements of NAVAIR Manual 01-1A-503 and, consequently, MIL-DTL-197K. FRCSW has also issued a local engineering instruction, MATL-001-03C, which requires conformance to the NAVAIR Manual and DSCR military specifications.

103. The FRCSW Materials Lab started to maintain a logbook to track T-34/T-44 landing gear bearings in May 2012. The logbook shows that between 7 May 2012 and 30 January 2013, the Lab received 170 bearings that it tested and examined for corrosion. The logbook shows that 29 out of 170 were rejected for corrosion; a 17% rejection rate. Ball bearings rejected for corrosion were manufactured in Japan, China and the U.S. (part of the old U.S. stock).

104. On 18 July 2012, DLAA NI instituted a "Modified bearings procedure for Receiving, Issuing and Inspection of T34/T44 Bearings" via an email sent by a DLAA NI Material Management Division Manager as a "By Direction" for the DLAA NI CO. The modified procedure was effective immediately and changed existing instructions for receiving, inspecting and storing bearings obtained for the T-34/T-44 landing gear overhaul production line. The modified procedure dictated that the FRCSW Materials Lab would inspect all foreign-made bearings and any U.S manufactured bearing more than three years old for corrosion, fit, form, and function; separate out rejects; and repackage bearings that pass inspection to await use by the production line.

105. Also on 18 July 2012, at the direction of the FRCSW CO, LMS-1 sent an email to a number of FRCSW personnel, including Complainant, notifying them of the new DLAA NI policy.

106. In his interview, SME-3, NAVAIR 4.3.5.4 (Mechanical Systems - Airframe Bearings), stated that factors such as the type of preservative coatings applied to the bearing, the packaging materials used, and length of time bearings sit on shelves before use contribute to the possibility and rate of bearing corrosion. SME-3 also stated that transporting bearings from Japan or China onboard a ship may contribute to the bearing's likelihood and rate of corrosion.

Results of NAVAIR and Contractor Lab Analysis

107. The bearing samples the NAVAIR IG team collected from DLAA NI during the week of 17 December 2012 included only two examples of bearings that were still in the original packaging.

108. The NAVAIR 4.3.5.4 engineers conducted an engineering analysis at the Materials Lab at NAVAIR Headquarters in December 2012 and January 2013. The testing included both non-destructive and destructive (cutting a bearing in half) techniques. The engineers took measurements and metallic core samples of the different bearings. They sent the core samples to Applied Technical Services, Incorporated, a testing lab in Marietta, GA, for analysis by combustion and Inductively Coupled Plasma (ICP) atomic emission techniques.

109. SME-3's 12 February 2013 report to the NAVAIR IG was in the form of answers to a set of specific and general questions:

1) Is there any evidence of corrosive defects?

The only corrosive defect was on one bearing (#3 USA bad) which showed slight evidence of corrosive oxidation on the bearing race surface. This is something that we usually would reject. It can occur if the bearing packaging has been compromised. There was no evidence of poor manufacturing quality. On two others we saw minor discoloration (presumably attributed to corrosion) on the bearing faces (non-bearing working surfaces), which is likely an artifact of the manufacturing process. (These bearings go through a heat treat process after which the *races and balls* are ground. But there is no requirement to grind the faces on these 52100 steel bearings and some manufacturers do and others [do] not. On a higher quality bearing it would be expected that the faces would be ground).

2) If there is any corrosion, is it affecting the integrity of the bearing?

In all the bearings examined, including those with minor corrosion, the integrity of the bearings was not compromised.

3) If there is any issue with corrosion, is it any different than U.S. manufactured bearings?

We saw no difference between the Japanese, Chinese, or U.S. manufactured bearings in terms of corrosion.

4) Do these bearings meet the military specs (non-government standards)?

Dimensionally the bearings were within spec. All the bearings meet the requirements of ASTM A29/A29M-12 for the quality of the steel (52100 stainless), with two minor deviations. Elemental analysis showed a concentration of silicon just barely above the limit (but still within tolerance) for the ball from the Japanese (#1) bearing, and a concentration of silicon higher than the tolerance limit for the Chinese bearing (#5) in the inner race. This is not unusual for a base grade of 52100 steel, and would have negligible impact to quality and performance as long as the hardness is within tolerance. It would generally not be something that should be seen in a bearing of higher quality than these. In terms of hardness of all rings and balls, all the bearings were within spec. A microstructural analysis of all the rings and balls showed a generally standard homogeneous microstructure, but there was evidence of some areas of inhomogeneous carbide distribution that would be consistent with a base grade of the 52100 steel.

5) Is there evidence that any of these bearings are substandard?

No. The manufactured condition of these bearings is consistent with similar bearings that would be available in the industry.

6) Is there any issue that either says they are good to use or not?

No, there is no issue that would preclude them from use. The only minor finding was that of the minor corrosion on the (#3 USA bad) bearing that is likely due to packaging or storage related issues.

Additional questions asked our opinion of whether FRCSW In terms of a comparison of the testing between NAVAIR Patuxent River and FRCSW, we found that the only difference in the test results was the concentration of silicon on the inner ring of the Chinese bearing. NAVAIR Patuxent River identified a level outside the tolerance for 52100 steel, while FRCSW identified it at the top of the tolerance limit. The deciding factor in both cases however, was the hardness, which matched. We conclude thus that FRCSW did the correct tests and drew the same conclusions from their data that NAVAIR Patuxent River did.

Finally, in lieu of a requirement for final face grinding after heat treat, these bearings are susceptible to corrosion in the presence of an aqueous environment; however, the degree of corrosion seen on the faces of these bearings was not cause for rejection or concern over how they had been packaged.

110. The results of the Applied Technical Services, Inc. examination, which came in the form of tables showing chemical composition, are summarized in SME-3's discussion of the "elemental" and "microstructural" analysis of the bearings included in his answer to question four.

Aircraft incident reports included in the complaint

111. Complainants identified two civilian agency incident reports in their correspondence with OSC.

Incident Report #1

112. The first civilian agency report is a Federal Aviation Administration (FAA) report that discusses a 6 January 2004, mishap involving a Beech model T42A Cochise, serial number TC804. The Army and Army National Guard use the Cochise for instrument training. It is a military version of the Beechcraft Baron (B55), a light, twin-engine aircraft originally developed by Beech Aircraft Corporation and currently manufactured by the Hawker Beechcraft Corporation. This aircraft is not the T-44, and naval personnel do not use it for training.

113. The incident report describes the following problem with a BEECH aircraft model T42A, serial number TC804:

DURING TRAINING FLIGHT, LANDING GEAR WOULD NOT EXTEND ELECTRICALLY OR MANUALLY (EMERGENCY EXTENSION). AIRCRAFT LANDED GEAR UP. DURING INVESTIGATION, FOUND BEARING ON ACTUATOR WORM GEAR IN MANY PIECES THUS ALLOWING THE WORM GEAR TO BIND THE SECTOR GEAR AGAINST THE LANDING GEAR GEARBOX HOUSING. MAINTENANCE MANUAL SECTION 15 INDICATES THAT THIS PART IS TO BE REPLACED OR OVERHAULED EVERY 2000 HOURS. THIS ACTUATOR ASSEMBLY HAS 2137 HOURS ON IT SINCE LAST OVERHAUL. 6342 HOURS TOTAL TIME OVER 40 YEAR SPAN.

114. The report identifies the bearing as part number 5201KD; describes its condition as GALLED {scratched}; and specifies the actuator for the main landing gear gearbox as the component that housed the defective part, the ACTUATOR for MLG GEARBOX. The report does not identify the bearing's country of manufacture.

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115. The bearing part number, 5201KD, is the same as the bearings obtained under the April 2012 contract and used by FRCSW to overhaul T-34 landing gear actuators. The FAA report clearly states that the maintenance requirement to replace or overhaul the bearing every 2000 hours, had been exceeded by 137 hours of operation when the mishap occurred, which indicates the part failed past its service life.

Report #2

116. The second civilian agency report the Complainants identified is an Aircraft Owners and Pilots Association (AOPA) report. It describes an incident that occurred on 19 July 1984, involving a Beechcraft Baron or BESS/56, which is not a Navy, Army, or other DoD aircraft. The report states:

WHEN THE PILOT EXTENDED THE GEAR, THE LANDING GEAR MOTOR CIRCUIT BREAKER POPPED. HE RESET THE CIRCUIT BREAKER AND AFTER A COOL DOWN PERIOD ATTEMPTED TO EXTEND THE GEAR AGAIN, BUT WITH THE SAME RESULT. THE PILOT WAS NOT ABLE TO EXTEND THE LANDING GEAR FULLY DOWN AND LOCKED WITH THE EMERGENCY EXTENSION SYSTEM. THE AIRCRAFT WAS SUBSEQUESNTLY LANDED WITH THE LANDING GEAR PARTIALLY EXTENDED AND THE GEAR COLLAPSED. EXAM REVEALED THAT SEVERAL P/N 5201 KD BEARINGS WERE BROKEN AND HAD BECOME JAMMED BETWEEN THE WORM GEAR AND THE LANDING GEAR BOX HOUSING OF THE LANDING GEAR ACTUATING SYSTEM. THERE WAS LITTLE LUBRICANT IN THE ACTUATOR. THE ACTUATOR HAD BEEN OPERATED 4,538 HOURS SINCE NEW AND HAD NOT BEEN OVERHAULED. THE MANUFACTURER'S RECOMMENDED OVERHAUL PERIOD IS 2000 HOURS.

PROBABLE CAUSE: LANDING GEAR NORMAL RETRACTION/EXTENSION ASSEMBLY. EMERGENCY EXTENSION ASSEMBLY - JAMMED. COMPANY MAINTENANCE PERSONNEL - INADEQUATE MAINATENANCE, LUBRICATION, MAINTENANCE NOT PERFORMED.

117. The AOPA report clearly states that the maintenance requirement to replace or overhaul the actuator every 2000 hours had been exceeded by 2,538 hours of operation when the mishap occurred. The overhaul should have been completed twice within this time span of 4,538 hours and thus the part failed well past its service life.

118. The NAVAIR investigative team asked the Naval Safety Center Aviation Department to provide all hazard and mishap reports that included any landing gear problems associated with any bearings in T-34/T-44 landing gear. The Safety Center said it

has no record of any hearings that failed or caused any problems in raising or lowering T-34/T-44 landing gear.

DCIS Safety Inquiry

119. DCIS personnel reviewed the NAVAIR 4.3.5.4 and Applied Technical Services report with the DLA IG investigator. The DCIS Special Agent (SA) and the DLA IG investigator assigned to this inquiry interviewed the DLAA NI CO and DLAA-1.

120. The DLA IG investigation remains ongoing and NAVINSGEN intends to work jointly with it to explore the relationship between DLAA NI and FLC SD that resulted in DLA personnel using DON purchase cards. However, on 14 May 2013, the DCIS SA working the case informed us that DCIS has concluded there is no safety issue and it will take no further action on this matter. Although the DCIS inquiry relied heavily on the NAVAIR and Applied Technical Services efforts, we consider the DCIS decision that no further inquiry is necessary to be independent confirmation of our conclusion, below.

Discussion and Analysis

121. Aviation parts are assigned a service life based on their probability of failure. An aircraft, like an automobile, requires servicing, maintenance, and overhaul at designated points over its lifespan in order to keep it operating as designed and to comply with FAA regulations. Adhering to the service schedule allows bearings to be serviced or replaced before they become likely to fail and is critical because of the role bearings play.

122. As explained in the reports cited by Complainant, neither of the aircraft that experienced bearing failure had been serviced within the scheduled maintenance timeframes and remained in service past the expected service life of those parts.²²

123. The bearings FRCSW obtained are manufactured in the same countries as those the contractor who had performed this work on T-34/T-44 aircraft for years had used; the U.S., Japan, and

²² The civilian maintenance manual for these aircraft delineates the service life requirements in flight hours. For their naval counterparts, service life is based on the number of landings. Naval training aircraft take off and land more frequently than their civilian counterparts in order to give trainees a foundation that prepares them for shipboard landings.

China. The Naval Safety Center has no record of any bearing failures on either aircraft. Thus, the allegation that FRCSW's use of foreign-made bearings increases the risk of failure is inherently suspect because the contractor also has used bearings manufactured in Japan and China to repair and overhaul these aircraft for years without incident. Indeed, Complainant became aware of the contractor's use of foreign-made bearings when he saw them in an actuator sent to FRCSW to overhaul during the pilot program. He does not allege those bearings were damaged.

124. DLA has issued a detail specification that it considers adequate to address bearing corrosion issues; NAVAIR and FRCSW have adopted that specification in their own manuals and instructions; FRCSW personnel state they adhere to those requirements, and we found no evidence indicating otherwise.

125. The evidence from the FRCSW Materials Lab logbook shows that over a nine-month period of tracking bearings that came to FRCSW from its supply sources, 29 out of 170 (17%) were rejected for corrosion. At first glance, this suggests some merit to the proposition that Japanese and Chinese bearings are more prone to corrosion than U.S. bearings. However, the NAVIR 4.3.5.4 engineering analysis report stated that Japanese and Chinese bearings showed no more signs of corrosion than did U.S. bearings, the observed corrosion did not compromise the integrity of any of the bearings. The most that can be said is that differences in packaging and exposure to a shipboard environment during transit may increase the risk of corrosion, but those concerns can be addressed by including contract provisions that address packaging, and proper inspection and repackaging upon arrival at FRCSW.

126. The July 2012 FRCSW/DLAA NI modification for receipt and storage of all ball bearings used on the T-34/T-44 production line ensures they go directly to the FRCSW Materials Lab for test and evaluation upon receipt, where they are evaluated for suitability (form, fit and function), including corrosion, immediately upon receipt. Prior to this modification, the bearings went to a warehouse and sat on a shelf until FRCSW needed to use them. The new process allows FRCSW to repackage the bearings for appropriate DLA on-site storage to reduce the likelihood they will corrode while sitting on the shelf. The Materials Lab then tracks the bearings for corrosion, processes them to ensure they are ready for use, rejects any if appropriate, and repackages them for storage until the FRCSW Artisans need to use them.

127. While the mishap reports Complainants cite do describe bearing failures that prevented landing gear from lowering properly, both reports clearly state that the parts were past the manufacturer's recommended time to overhaul or replace them when the mishap occurred. In both cases the parts failed past their service life. The most appropriate use of these reports is to demonstrate the importance of adhering to a manufacturer's recommend maintenance intervals, even in the case of the small and relatively inexpensive parts of an aircraft.

Conclusion

128. The allegation that the foreign-made bearings FRCSW Artisans used to overhaul T-34/T-44 landing gear actuators in 2012 are prone to corrosion that creates a danger to public health and safety is not substantiated.

Recommended Actions

129. We recommend that DLA Aviation and FRCSW continue to coordinate and track the condition of all bearings ordered and used on the T-34/T-44 overhaul production line. The FRCSW Materials Lab should continue to examine, track, and report the condition of all bearings delivered to FRCSW.

130. We recommend that DLAA NI and FLC SD continue to work to attain the waivers on the foreign ball bearings required for the T-34/T-44 overhaul production line and to develop a U.S. or Canadian source of manufacture for these bearings.

131. We recommend that DLAA NI and FLC SD ensure contracts issued for the purchase of bearings that FRCSW uses include clauses that impose the packing requirements established by MIL-DTL-197K, NAVAIR Manual 01-1A-503, and FRCSW MATL-001-03C.

Allegation Three

That FRCSW leadership mismanaged the T-34/T-44 landing gear actuator production process by failing to use due diligence in assuring that FRCSW Artisans only installed bearings purchased in conformance with U.S. law and regulations.
(substantiated)

What Complainant Contends

132. Complainant asserts that he repeatedly tried to explain to management that the DFARS prohibits the use of a foreign-made bearing unless the bearing has documentation that establishes it was purchased properly, that is, after obtaining a waiver. He also says that despite his repeated requests, management never presented him with anything showing that the April 2012 purchase was permitted by the BAA. Eventually, QA management persuaded another QAS to sign-off on the paperwork when Complainant, who ordinarily would have signed the paperwork, was not present. The OSC tasking letter states that Complainant identified the FCSW QA management personnel he believes acted improperly as QAD-3, Chief QA Officer; QAD-2, QA Department Head; and QAD-1, QA Division Head.²³ He identified QAS-1 as the QAS who improperly signed the paperwork permitting Artisans to use the foreign-made bearings.

Findings

Summary

133. PMA-273 asked FRCSW to establish a T-34/T-44 overhaul capability in July 2010. FRCSW's preliminary work efforts included creating an itemized list of all the new parts it needed and ordering them from DLAA NI, its "supplier." The actuator bearings appear on the lists. In October 2010, FRCSW formed an Integrated Product Team (IPT) to develop processes, logistics, and pricing information and by March 2011, FRCSW was ready to start a pilot program for T-34/T-44 nose and main landing gear component work before going into full production.

134. Complainant began questioning the use of foreign-made bearings during the pilot program when, in April 2011, he first saw them in the actuators FRCSW overhauled during the pilot program. In March 2012, while identifying suppliers for parts FRCSW needed, DLAA NI personnel were unable to locate a company that was manufacturing some of the necessary actuator bearings in the U.S. or Canada. DLAA NI, FLC SD, and FRCSW personnel knew various federal laws and regulations imposed restrictions on DoD's ability to purchase foreign-made bearings and that month they contacted senior Office of Secretary of Defense (OSD) foreign acquisition specialists to ask for advice. Two OSD

²³ We discuss the actions of QAD-3 and QAD-1 in this report. We found that QAD-2 attended a couple of meetings, but we concluded that he did not play any significant role in these matters. He retired in March 2013.

specialists and two FRCSW QA employees (Complainant and his supervisor) expressly told DLAA NI, FLC SD, and FRCSW personnel that DoD could not purchase foreign-made bearings as end items in the absence of a SECNAV waiver. No one contacted the bearing specialists at DLAA Richmond at this time.

135. Despite these warnings, DLAA NI, FLC SD, and FRCSW decided to purchase foreign-made bearings and install them in T-34/T-44 actuators awaiting overhaul without obtaining a waiver because the purchase price of the bearings would not exceed \$3,000.00. They either overlooked the DoD Appropriations Act restrictions or, more likely, incorrectly thought they did not apply to purchases of \$3,000.00 or less. The catalyst for the OSC complaint and this investigation was the April 2012 FLC SD purchase of foreign-made bearings as end items discussed in Allegation One, and the May 2012 FRCSW decision, over Complainant's protests, to install those bearings in T-34 actuators awaiting overhaul.

136. On 29 June 2012, FRCSW issued Complainant a letter of reprimand for refusing to sign the paperwork a QAS must sign before an Artisan could install the bearings. The basis for the reprimand, and the subsequent denial of Complainant's grievance, was that the BAA permitted the purchase of the foreign-made bearings without a waiver. Consequently, in management's opinion, Complainant had refused to obey a lawful order to sign the paperwork. Complainant filed a grievance, but FRCSW ignored his attempts to explain that the prohibition arose from the DFARS provisions implementing the DoD Appropriations Act restrictions, which do not specify a price threshold before they become applicable. FRCSW continued to overlook the fact that the DoD Appropriations Act and the implementing DFARS restrictions do apply to purchases of \$3,000.00 or less until this investigation started.

137. In November 2012, shortly after reviewing the OSC tasking letter and conducting additional research, the FLC SD attorney acknowledged that the DoD Appropriations Act and implementing DFARS regulations at 225.7009 did not provide for a micro-purchase exception. She then concluded that the April 2012 contract award was improper and may have created an ADA violation. She recommended that FLC SD immediately report the potential violation through the chain of command. She also recommended FLC SD begin processing a request for a waiver.

138. In December 2012 or January 2013, DLAA NI contacted DLA Aviation, Richmond, Virginia (DLAA Richmond), to request assistance in (1) finding U.S.-made bearings or foreign-made

bearings for which DLA had already granted a waiver, or (2) obtaining a waiver for the foreign-made bearings FRCSW needs for the T-34/T-44 trainers. DLAA Richmond is the "bearing specialist" for DLA Aviation. DLAA Richmond is assisting in this effort and has located a domestic manufacturer for one of the T-44 bearings, but they will not become available before March 2014. A company thought to be able to provide domestic T-34 bearings in July 2013 recently informed PMA-273 that the only bearing it could obtain was foreign-made. A description of the facts developed during this investigation that led us to substantiate the mismanagement allegation follows.

Role of PMA-273 in Supporting T-34/T-44 Trainer Aircraft

139. DON aircraft are managed, from acquisition to retirement, under a program known as Program Manager Air (PMA). PMA-273, the PMA for Naval Undergraduate Flight Training Systems, reports to NAVAIR and manages all naval jet, propeller, and helicopter training aircraft and associated training systems that the Chief of Naval Air Training (CNATRA) uses in its undergraduate flight training programs. PMA-273 is responsible for ensuring ready-to-fly trainer aircraft are available to train naval pilots and flight officers, to include managing the overhaul of T-34/T-44 trainer aircraft.

140. Under the "commercial for life" program that PMA-273 used until 2010, a contractor "sold" completed overhaul services to the DON. Consequently, its purchase of foreign-made bearings did not create BAA or DoD Appropriations Act issues because a contractor provided the DON the bearings as components, rather than as end-items, and the value of those components was minor in relationship to the entire product the contractor sold to the DON.

PMA-273 Efforts to Find New Contract Vehicle

141. NAVAIR awarded contract number N00019-09-D-0023 to L-3 Communications Vertex Aerospace LLC of Madison, Mississippi, with a period of performance to run from 21 April 2009 through 30 September 2010. This contract encompassed all labor, services, equipment, tools, facilities, technical data, parts, and material necessary to accomplish T-34/T-44 landing gear overhauls. The contract included an option, which PMA-273 exercised, to extend the contract for six months to 31 March 2011. On 21 July 2010, NAVAIR posted a notice in FedBizOps announcing the decision to exercise the option.

142. As in 2009, PMA-273 intended to compete the contract for this work upon the expiration of the L-3 contract. However, in the fall of 2010, NAVAIR was conducting a larger competition for a Contractor Logistics Support (CLS) contract to provide maintenance, other than for landing gear assembly overhaul, for T-34, T-44, and T-6 aircraft. NAVAIR contracting resources were not sufficient to manage a T-34/T-44 landing gear component completion at the same time.

143. Consequently, by October 2010, PMA-273 had decided to award a sole-source follow-on contract to L-3 and on 26 October 2010, it published a notice to that effect in FedBizOps. Shortly thereafter, several companies contacted the Government to express their interest in the work. One of them, Duncan Aviation, which had held the contract for this work before NAVAIR awarded it to L-3, stated it would protest a sole source award to L-3. To avoid a protest, PMA-273 cancelled the solicitation and transferred the work to FRCSW as a way to meet the requirement without creating a gap in services.

Preliminary FRCSW Efforts

144. The DON had purchased the T-34/T-44 aircraft as FAA-certified Commercial-Off-The-Shelf (COTS) aircraft and PMA-273 intended to maintain the aircraft under a "commercial for life" program. Consequently, the DON did not purchase rights in the proprietary data or drawings for either aircraft. When FRCSW was assigned the T-34/T-44 landing gear overhaul work in July 2010, it did not have access to the manufacturer's maintenance manuals, proprietary data, or drawings that it typically would have for work on military aircraft like the E-2/C-2 or F/A-18. This lack of information made FRCSW's initial planning efforts, including identification of parts DLA would supply, more difficult. For example, FRCSW did not receive aircraft commercial maintenance documents until September 2010.

145. When PMA-273 transferred the overhaul work from L-3 Communications to FRCSW, there was no agreement in place to provide FRCSW with the excess stock that L-3 had purchased. Eventually, FRCSW did obtain some bearings from L-3, but in early 2012, FRCSW decided not to use them because of concerns over their origin.

146. Because FRCSW would perform work previously done under contract, the FRCSW leadership decided that the Business Operations Department should run the T-34/T-44 program instead

of the Production Department. They placed LMS-1, a Business Operations Department employee, in charge of the program.²⁴

147. The major components of the T-34 landing gear assemblies include: one nose landing gear; one left-hand main landing gear; one right-hand main landing gear; and a single actuator that operates all three landing gear. The major components of the T-44 landing gear assemblies include: one nose landing gear; one left-hand main landing gear; one right-hand main landing gear; three actuators (one for each landing gear); and one gearbox.

148. An Artisan performs the work on the landing gear components. A QAS checks, or verifies the work of the Artisan reassembly effort. By doing this, a QAS provides an added level of assurance that the work done by Artisans on the production line has been verified and performed correctly. A QAS ensures that an Artisan followed the proper steps outlined in the assembly directions, confirms that all of the correct parts were utilized, and verifies that the required paperwork was filled out correctly. QAS verification is required at certain steps along the production line, but the point(s) at which QAS verification takes place vary from one production line to another.

149. The initial production pilot efforts started with T-34/T-44 nose and main landing gear components between March and July 2011. At the beginning of the pilot programs, FRCSW received the following T-34 landing gear components: 12 right main landing gears; 13 left main landing gears; 16 nose landing gears; and 20 actuators. For the T-44, FRCSW initially received seven right main landing gears; eight left main landing gears; four nose landing gears; three nose landing gear actuators; and six gear boxes. In April 2011, Complainant first reported that he had observed foreign-made bearings in these components. Insofar as we can determine, the FRCSW leadership took no action to address the use of foreign bearings until February or March of 2012.

150. In July 2011, FLC ContOff issued a contract that included bearings as line-items without obtaining a waiver or including

²⁴ While neither a QA nor a Production Department employee, LMS-1 received emails from those and other departments, and then decided which to forward to others. He received and forwarded some of the critical 26 March 2012 emails discussed in this report, but generally did not copy QAD-3, QAD-1, Complainant, or other QA personnel.

the required contract clauses.²⁵ Between July and August 2011, PMA-273 provided FRCSW the historical repair information that it had obtained from the aircraft manufacturer. FRCSW incorporated this information into its technical data packages. FRCSW completed the pilot production effort for landing gear struts in October 2011. FRCSW completed the pilot program for T-34 actuators in March 2012, and it was ready to begin production line work on them, subject to obtaining more actuator bearings.

Initial FRCSW Concerns About Using L-3 Bearings

151. The process of transferring the work from L-3 to FRCSW eventually included the turnover of the parts that L-3 had purchased, but not yet used, when the contract expired. FRCSW received approximately 12 foreign-made T-34 actuator bearings, P/N 5201 KD. As the T-34 actuator pilot program was concluding in March 2012, FRCSW had six T-34 actuators awaiting overhaul. Unsure of whether it could use the bearings obtained from L-3, FRCSW began requesting assistance in deciding what to do. At the same time, FRCSW needed to obtain more of the P/N 5201 KD bearings for the expected future T-34 actuator overhaul work. Communications on the issue of bearings between FRCSW, DLAA NI, and FLC SD reached its height in March/April of 2012.

152. FRCSW Atty, FRCSW Office of Counsel, told investigators that QAD-3 asked her whether FRCSW should use the foreign-made ball bearings it received from L-3. FRCSW Atty told QAD-3, "T, you know, I haven't been in the contracts arena for so long, and Buy American is not an area of the law that I really encountered that much, even when I did contracts a lot, so let me call [FLC Atty] at FLC."

153. FRCSW Atty and FLC Atty did discuss the issue of the source of the ball bearings and decided "we're not absolutely certain about the source of the bearings, let's just get some new ones. And we'll make sure that whatever we get complies with Buy American Act".

154. FRCSW Atty took this information back to QAD-3 and she stated, "He [QAD-3] wanted to do the right thing, he says because ultimately whatever we do, you know, we may get like a

²⁵ The investigators did not obtain any evidence that suggests there was any question or controversy about this contract.

ULP²⁶, we might get something. So, we were all very aware of that. So, we - that's why we went to [FLC Atty]".

155. In his December 2012 interview, Complainant said that his involvement with the T-34/T-44 landing gear overhaul program began when he was examining an actuator that had come in for overhaul in the spring of 2011 and he observed that it used a bearing with the word "Japan" stamped on it. In his interview and in his letter to OSC, Complainant states that on 1 April 2011, he attended a meeting as the QAS representing the QA Department. The purpose of the meeting was to bring together all departments at FRCSW that had some responsibility in the T-34/T-44 landing gear overhaul production line. Complainant said he raised concerns about the foreign-made bearing he had seen. He said he continued raising these concerns at subsequent weekly meetings, and eventually stopped attending them.²⁷

156. In his 4 December 2012 interview, Complainant explained:

I didn't like the fact that we were using foreign bearings, so I did my investigation. I came across what the DFARS - Defense Federal Acquisition Regulation Supplement. I looked at it, looked into that. . . . And then it can back to me, well, it's the Buy American Act. I said, okay, I'll look up the Buy American Act, too. I mean, Google supplies you with everything; even they could have done that. And I looked it up and I found very troubling and disturbing answers to what I expected. . . . I just wanted to quietly go in and say, hey, you guys are doing something wrong. There are ways to get around this. You can apply for the waiver, blah, blah, blah. And they decided to ignore me and so here we are today.

157. In his letter to OSC and in his interview, Complainant said that he signed the paperwork for the first five T-34 actuators FRCSW overhauled because FRCSW used U.S.-made bearings.²⁸

²⁶ An unfair labor practice.

²⁷ We obtained no evidence from others to contradict Complainant's assertions about what he said at the 1 April 2011 meeting, or his assertions that he raised the matter a number of times at subsequent meetings, most of which would have been among QA personnel.

²⁸ If Complainant is correct, these first five bearings would have come from the old U.S. surplus stock that L-3 transferred to the DON. We developed some evidence that these bearings were foreign-made, however, and are unable to conclude whether these five bearings were foreign-made. Given

158. In his 4 December 2012 interview, Complainant stated that QA management ignored his repeated assertions that a waiver was required. He also said:

I asked week in and week out for the waiver. I asked is there any - are you going to apply for the waiver? Just let me know if you're applying for the waiver and I'll kind of - I'll ease up on things and I'll start maybe looking favorably on what you're trying to do here. And they just gaffed me off.

DLAA NI Efforts to Obtain Domestic Bearings

159. Although DLA is a DoD Component with broad contracting authority, under the BRAC transition plan, DLAA NI did not have general contracting authority at the time that the events described in this report took place. Consequently, its purchasing authority was limited to purchase (government credit) card transactions.²⁹ Therefore, when DLAA NI needed to purchase parts in amounts that exceeded its authority, it usually asked a contracting officer at FLC SD to purchase the parts instead of contacting a higher level DLA office. The major participants in the effort to coordinate and support DLAA NI's contracting needs were DLAA-1, Material Management Division Officer at DLAA NI; FLC ContOff, a contracting officer at FLC SD; and FLC Atty. DLAA-1, FLC ContOff, and FLC Atty have worked together for many years.³⁰

160. During the pilot production program, DLAA NI sought suppliers for the bearings needed to overhaul the T-34/T-44 landing gear. It was unable to find a U.S. or Canadian manufacturer for several of the bearings FRCSW needed. According to a draft waiver request now in process, DLAA NI efforts to identify a domestic source for those bearings included:

The DLAA NI Material Manager's 15 March 2012 extensive internet search that found no certified OEM American-or

Complainant's refusal to agree to use foreign-made bearings in May, we are inclined to agree that his recollection is more accurate.

²⁹ The DLAA NI CO informed us that under the transition plan, DLAA NI will have contracting authority beginning on 3 June 2013.

³⁰ DLAA-1 explained that as a result of DoD organizational changes, he was an employee of a predecessor organization to FRCSW, became an employee of a predecessor organization to FLC SD, and is now a DLAA NI employee, all without ever changing desks or offices.

Canadian-manufactured ball bearings for the T-34 landing gear actuators.

A 15 March 2012 contact with Alliance Electric indicating that Alliance could provide only Japanese-made bearings manufactured in 2007.

A 16 March 2012 contact with World Class Aviation indicating that it, too, could only provide OEM certified Japanese-made ball bearings.

A 16 March 2012 contact with HBC in which HBC stated that that it was not interested in providing ball bearings.³¹

March 2012 Discussions on Purchasing Bearings

161. In the late afternoon of Friday, 2 March 2012, DLAA-1 sent FLC Atty an email. Under a subject line of "FW: T-34 T44 Bearings," he stated:

[FLC Atty], need your opinion. We require bearings that are for a commercial application system IE trainer aircraft landing gear.

Below was my original draft but after changing it twice I need your opinion. Is the fact that it is commercial application allowing the vendor to buy bearings from Japan from their subs ok for the NAVY to procure? I have been talking to FCL ContOff. I am sure he can give you more info.aft to CO FRCSW below:

CO wanted to update you from our board brief discussion this morning:

The current HBC solicitation is considered a Commercial application. This means that it is not strictly military and will never be a sole military application.

The attached FAR (252.225-7015) [sic]³² par F makes a specific reference to the use of parts unless they do not

³¹ This information appears in a draft waiver request pertaining to the April 2012 contract that the investigators obtained. HBC refers to Hawker Beechcraft.

³² The correct number is 252.225-7016. This numbering system is used in the DFARS, not the FAR. As discussed in Allegation One, DFARS Section 252.225-7016 is the contract clause used for the DoD Appropriations Act restrictions on bearing purchases that should be included in all solicitations and contracts for the end-item bearing purchases FLC SD and DLAA NI made in support of the FRCSW work. This is the first document the investigators

[use?] bearings excluded by this clause. So we can use bearings from Japan even in our contract which is being solicited.

Even Japan although not considered a qualifying country is not precluded from providing material commercially as a sub contractor to the prime for commercial applicable material.

For the current bearings provided by the PBL vendor, FLC suggested that we contact the NAVAIR contracting to see if this was part of the original contract buying commercial in their procurement strategy, if so then I would say we can use the provided bearings. ([LMS-1] can you contact the contracting officer to verify this was a commercial procurement?)

I have also provided the proposed list of parts and lead times attached as the lead times vary from 3 days to 490 days, understand that this is the first pass and could be a standard reply to government proposal. Contracting Officer is inquiring. This should be evaluated as to possible impact to your program so I can inform the contracting officer to negotiate an improved delivery and of course price considerations. Please do not distribute this list as this is a solicitation in process.

Still not finding alternate bearing source, my staff indicated they have engaged engineering support. I will continue to research.

Sorry to be so detailed but the commercial application to direct production material support is actually new to many of us.

162. Subparagraph (f) of DFARS 252.225-7016, to which DLAA-1 referred in his email, states:

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts, except those for-

- (1) Commercial items; or
- (2) Items that do not contain ball or roller bearings.

found that mentions the DoD Appropriations Act restrictions rather than the BAA restrictions, although DLAA-1 used the word Far rather than DFARS.

Suitable for Public Release (names removed)

163. In the morning of Monday, 5 March 2012, FLC Atty replied with the single question: "[DLAA-1], you are buying ball bearings?"

164. Shortly after noon on the 5th, FLC Atty sent DLAA-1 and DLAA NI CO, another email stating:

I believe the exception applies only when you are buying the end item or component that actually contains the ball bearing - not the ball bearing itself. So, if you are buying ball bearings as part of a commercial component - whether the end-item itself is commercial or non-commercial - you are okay. But, if you are buying the ball bearings only - I think you still have a problem. [Underlining added for emphasis.]

If we are buying ball bearings for integration by another manufacturer or by Navy, we have to seek a waiver if buying from Japan. See DFARS 225.7009-4. [Underlining added for emphasis.]³³

165. On 6 March 2012, DLAA-1 replied to FLC Atty, with copies to DLAA NI CO and FLC ContOff at FLC SD, stating in pertinent part:

Is the waiver so difficult that it is unattainable?

My staff is seeking alternatives but since this material is exclusive to commercial applications and a military trainer aircraft we may be faced with a large dilemma. This is a readiness for training issue as the fleet has no new procurements as these are aging weapon systems.

The end item was previously a PBL that provided us bearings they found from Japan and the immediate question is can we use them with government inspection?

166. On 7 March 2012, FLC Atty sent an email to DLAA-1, with copies to DLAA NI CO, FLC ContOff, FRCSW Atty, and another FLC SD attorney. She told DLAA-1: "I am going to ask ASNRDA for a read on this since you already have the bearings." DLAA-1 replied, stating: ". . . if ASNRDA findings could be

³³ This is the second express reference to the DoD Appropriations Act restrictions that the investigators found. DFARS Section 225.7009-4, Waiver, authorizes SECNAV to waive the restriction by certifying to the Senate and House Appropriations Committees that adequate domestic sources are not timely available (without regard to price) to meet DoD requirements and "the acquisition must be made in order to acquire capability for national security purposes."

distribution I would appreciate it . . . Thank you for taking this on as it is a production impediment."

167. On 13 March 2012, DLA MMSC, the Material Management Section Chief for DLAA NI, sent FLC Atty an email, with copies to DLAA-1, DLAA NI CO and others stating: "FRC CO just left my office requesting an update on this issue. . . . Any findings to report from ASNRDA?"

168. FLC Atty replied to DLA MMSC and the others on his email by stating in pertinent part: "I will check with [ASNRD&A Atty], Associate Counsel, ASNRDA - but I am pretty sure that you cannot buy foreign-made bearings as standalone items. The exemptions refer to ball bearings furnished in another component." [Underlining added for emphasis.]

169. Later on 13 March 2012, FLC Atty sent an email to SME-2, the OSD Senior Procurement Analyst mentioned in Allegation One, asking for assistance in interpreting the restrictions on procuring Japanese-manufactured ball bearings, as she had a DLA client that wanted to acquire the bearings for "commercial applications." FLC Atty told SME-2 she had already expressed the opinion that the commercial application exception applied only to bearings obtained as a component of another item, and not to bearings purchased as an end item. FLC Atty did not specifically mention either the BAA or the DoD Appropriation Act, or identify a specific DFARS provision.

170. SME-2 responded in an email, also dated 13 March 2012, that states:

We are all packed up to move, so I can't give exact references, but I do recall that when bearings are purchased as end items, the restrictions apply. The key is how the bearings are purchased, not ultimate end use. I would assume that bearings are almost always intended as components of a larger item. When we buy a commercial item already manufactured, then it would be considered unreasonable to dictate the source of the bearings. However, when DoD is buying bearings separately, that provides the opportunity and the responsibility to comply with the domestic source restrictions. [Underlining appears in the email.]

171. SME-2 included another FLC SD attorney, who works for FLC Atty, and ASNRD&A Atty on her email.

172. Also on 13 March 2012, a DLAA NI employee named DLA MMSC forwarded SME-2's email to the FRCSW Commanding Officer (CO), FRCSW-1, and said:

CO, as noted in the attached. Consideration for a waiver is not optional; therefore, source restrictions are being upheld. DLA will continue pursuing alternative methods of sourcing.³⁴

173. On 14 March 2012, FRCSW-1 sent an email directly to SME-2. He wrote:

I am the Commanding Officer at FRCSW (use to be called NADEP North Island). I'd like to clarify the situation.

The PMA for the T34/T44 Aircraft recently moved the rework of the Aircraft's Landing gear components from Contractor to Organic.

In order to rework some of the components, bearings need to be replaced. When the Contractor was reworking the components, they obtained the bearings from the OEM HBC (an American company) who provided the contractor bearing from their vendor (a Japanese Company). These are the same bearings (from the Japanese company) that were in the components when the aircraft were delivered to the Navy many years ago.

We, FRCSW, now are reworking the components. When the Work in Process was turned over to FRCSW, we received the retrograde components and the material to rebuild the components (to include some Japanese bearings). We would like to complete the rework using those bearings (which as stated were provided to us by HBC and / or the previous rework contractor).

In addition, we need to continue to purchase bearings for other items in WIP. There is no question on form, fit or function of these bearings (from the Japanese vendor) as stated previously, they were the ones that were used by the OEM who built the aircraft and the follow on contractor. We are not asking to use an unqualified component.

My concern is if we have to go out and find a substitute source or bearing, it will have to be qualified/requalified

³⁴ DLA MMSC did not explain why he thought seeking a waiver was not an option, but we think he meant that FRCSW was required to seek a waiver.

as a source, in addition to analysis for form, fit and function. This takes months to do.

The training command currently has aircraft that are not operational for landing gear, we need a solution or ruling or suggestion in order to move forward.

Any help or guidance would be greatly appreciated.

174. On 19 March 2012, FRCSW-1 sent another email directly to SME-2 stating:

Appreciate you looking into this for FRCSW. Here is an update on the information we have identified.

DLA was unable to identify a U.S. manufactured source for the bearings.

I'm concerned that FRCSW will have to dispose of the bearings on hand, not for any form, fit, quality or function issues, just because of a trade agreement issue. Seems like a waste of perfectly good bearings.

Again, we are just trying to find a solution to support fleet readiness.

175. On 20 March 2012, DLAA NI's DLAA-1 signed a purchase request³⁵ for the procurement of 50 P/N 5201KD double row ball bearings used in the T-34 in the total amount of \$3,500.00 dollars. The request form had a "DATE REQUIRED of 4/10/12," which indicated that DLAA NI was requesting that the parts be delivered by 10 April 2012. DLAA-1 also prepared a draft waiver request and sent an email, with the subject line "RE Bearing Waiver," to FLC Atty and FLC ContOff stating:

I have prepared the attached draft waiver and would like your chop on this. I would like to attach it to a procurement document for a quantity of 50 each at a value of \$3500.00 dollars tomorrow. Please advise soonest if this is a valid way to proceed.

176. During his 17 December 2012 interview, DLAA-1 discussed the T-34 bearings that were no longer produced in the U.S. He told investigators that his staff had drafted a waiver to obtain these bearings from a foreign source because "I wanted to make sure we had the waiver in the system to communicate to DLA, and

³⁵ REQUEST FOR CONTRACTUAL PROCURMENT-NAVCOMPT FORM 2276 (REV 8.81) S/N 0104-LF702-2761

DLA is the principal provider of these, because at one time, they did have stock numbers."³⁶

177. On 20 March 2012, after receiving FRCSW-1's second email, SME-2 copied FRCSW-1 on an email she sent to a colleague, SME-3, stating: "I think this goes beyond a regulatory issue and would request your assistance."

178. In an email dated 21 March 2012, QAD-3 reminded two FRCSW employees and LMS-1 that "a Technical Engineering Instruction (TEI) works for the QA Department for the purposes of physical characteristics only, not the acquisition issues."

179. SME-3 is a Senior Procurement Analyst in the (AT&L) Office of Defense Procurement and Acquisition Policy. She works in the International Contracting Policy Directorate. In this position, SME-3 is responsible for Contract Policy and International Contracting (CPIC). One of the areas in CPIC's policy portfolio is domestic preference legislation such as the BAA, the Berry Amendment, restrictions on DoD procurement of specialty metals, and other restrictions on DoD procurement, such as those pertaining to ball and roller bearings.

180. On 26 March 2012, SME-3 sent an email directly to FRCSW-1 and copied SME-2, ASNRD&A Atty, FLC Atty, DLAA-1, and LMS-1, among others. She stated:

Very few waivers are approved for this statutory restriction implemented by the DFARS. Waivers must be approved by the Secretary of the department responsible for acquisition or, for the Defense Logistics Agency, the component Acquisition Executive, on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that--

(a) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

You may submit a request via your chain of command for approval by Secretary of the Navy responsible for acquisition. Any request for a waiver must be thoroughly documented that no domestic sources are available, but I

³⁶ DLAA-1 is referring to DLAA Richmond, and to the "national stock numbers" that DoD uses to identify parts. We confirmed with DLAA Richmond that the NSN for the T-34 bearing has expired and must be reactivated.

doubt that it would be approved. When DoD is buying bearings as end items to be installed in another component, DoD must comply with the domestic source restrictions.

As the DLA point of contact indicated in the email trail below,³⁷ DLA cannot certify that domestic sources are not available. I have attached the DFARS prescription and clause for your review. [underlining added for emphasis.]

181. The attachment SME-3 provided bore the file name "225.7009 Restrictions on Ball and Roller Bearings." The attachment included a complete copy of that section of the DFARS. Chronologically, this is the third document that the investigators found that expressly identifies this specific DFARS restriction, which is distinct from the BAA and the Berry Amendment.

182. After reading SME-3's email, FLC Atty sent an email, also dated 26 March 2012, to DLAA-1, at DLA in which she stated:

[DLAA-1], It seems your CO jumped the procurement chain and received a negative response from the Office of the Assistant Secretary. I was preparing a response for today (that said the same thing). Sorry. I am considering this issue to be OBE.

183. During her interview, FLC Atty said that what she considered OBE was the attempt to get a waiver for the ball bearings. She said she believed the idea of getting a waiver was done, stating: "she (referring to SME-3's email) said that waivers were almost impossible to get, and so sorry, goodbye."

184. FLC Atty told the investigators that after reading her email, DLAA-1 called her "almost immediately" to express his concern for obtaining the bearings and to ask what could be done at that point to obtain the bearings. She explained:

I considered the matter closed until [DLAA-1] called me back and said, oh, my God, you know, what are we going to do now?" . . . And then again with the book on my lap, I looked through it and see that the DFARS has in every section an exception for micro-purchase, except one. And that's ball bearings . . . (break) . . . And, so, that's why that same day at 4:30 in the afternoon I said keep it under the micro-purchase threshold.

³⁷ We were unable to identify the email trail.

185. Immediately after their conversation, DLAA-1 sent FLC Atty an email, copy to FLC Sup ContOff, FLC ContOff's contracting officer superior at FLC SD, stating:

Sorry our call dropped hard to get a good signal out here. A package is in route to contracting. I will follow up with FLC Sup ContOff when it gets there. Hopefully the order is a simplified requisition because of the dollar threshold. Thanks for the conversation.

186. FLC Atty replied to DLAA-1 almost immediately, and copied FLC Sup ContOff. The entire text of her email, with the subject line "Bearing Waiver," states:

Keep it under \$3000 and we do not have to worry about Buy American Act either!

187. This single sentence email is the FLC SD attorney statement that everyone cites for the proposition that FLC SD, DLAA NI, and FRCSW received a "legal opinion" that the foreign-made bearings could be purchased without obtaining a waiver if the purchase price did not exceed \$3,000.00.

188. For example, during his interview on 17 December 2012, DLAA-1 stated that he considered FLC Atty's email to represent the final legal approval to proceed with the purchase request for the Japanese ball bearings.

189. Consequently, on 27 March 2012, DLAA-1 sent FLC ContOff an email requesting he expedite his 20 March 2012 purchase request for the procurement of 50 P/N 5201KD double row ball bearings at a total cost of \$3,500.00 dollars. The investigators' review of the procurement request reveals that someone made a handwritten change reducing the original request for 50 bearings to 38 bearings, thereby reducing the amount of the purchase request from \$3500.00 to \$2,660.00, which was below the "micro-purchase" threshold to which FLC Atty had referred.

190. On 27 March 2012, a DLAA NI employee received an email from an employee of GlobalParts.aero, an authorized Hawker Beechcraft spare parts distributor. This email confirmed that Timken was the manufacturer of the P/N 5201KD ball bearings listed on a quote sheet previously sent to DLAA NI and that the quoted bearings were made in Japan.

191. FRCSW Atty stated during her interview that this entire thing was very confusing, "But when [DLAA-1] told me [FLC Atty] said just keep it under \$3,000.00, I thought, well, you know,

she's the contracts expert, and that's why I brought her in, because she is the contracts expert".

April 2012 Decision to Purchase Japanese Bearings

192. In Allegation One, we explained why the April 2012 contract for the purchase of T-34 actuator bearings violated the DoD Appropriations Act and implementing DFARS provisions. Simply put, there is no micro-purchase threshold or exception for the purchase of foreign-made bearings as end items. The decision to reduce the quantity of bearings purchased to keep the purchase price under \$3,000.00 made no difference.

193. We note that FLC ContOff never asked FLC Atty to review this contract, even though he was required to obtain a legal review. We do not believe that she was even aware that FLC SD, rather than DLAA NI, was going to award it, since her email exchanges were primarily with DLAA-1 rather than FLC ContOff. Had the appropriate clause been included in the contract, the potential ADA violation could have been avoided. We cannot say whether FLC Atty would have recommended including the clause.

FRCSW Debate Over Installing Japanese Bearings

194. Despite the late March DLAA NI and FLC SD conclusion that it was proper to purchase foreign-made bearings in small quantities without a waiver, the debate over using foreign-made bearings FRCSW obtained from L-3 or under the April 2012 contract, continued from March to mid-May 2012.

195. On 16 March 2012, FRCSW contacted personnel at Fleet Readiness Center Southeast (FRCSE), in Jacksonville, Florida to ask whether someone there would "give authorization" to use the Timken bearings, manufactured in Japan, that FRCSW received from L-3. FRCSE responded on 20 March 2012 with an email to LMS-1 and others in the Business Operations Department stating:

We're working the issue attempting to identify other bearings sources that manufacture the 5201KD domestic. Timken has not produced this particular bearing domestically in the last 7 years. Though I don't have a Technical problem with using the bearing, the easiest solution (rather than getting bogged down with legal) is to purchase the same part numbered bearing from a domestic vendor. I'm down to two sources and should hear back from them by tomorrow.

196. Later on the 20th, LMS-1 responded, stating in part:

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Our DLA team members are working on a waiver . . . to procure bearings for future requirements . . . We have an immediate requirement for a waiver for the 14 Japan bearings we have in our custody in support of the T-34 actuators. Six actuators could go into assembly today if we had the waiver issue resolved. Can [you] help?

197. FRCSE's response agreed there "are no known issues with the Timken bearings manufactured in Japan" but said their personnel could not assist with the waiver.

198. FRCSW internal emails between QAD-3 in the QA Department and LMS-1 in the Business Production Department on 28 March reveal that while concerns about the technical acceptability of the Japanese-made bearings appear to have been satisfied, acquisition concerns remained. In one of the emails, QAD-3 stated:

[LMS-1], . . . I do believe this will satisfy the QA requirement, but the program still has an acquisition regulation issue that legal must answer. At this point, QA alone cannot authorize use of these bearings, we are only one piece.

199. On 29 March 2012, after learning (incorrectly) that DLAA NI had sent a waiver request to NAVSUP, LMS-1 asked DLAA-1 whether the waiver request would "also apply to the 14 Japan bearings (P/N 5210KD) we currently have in our custody?" DLAA-1 replied:

The previous procurements are not on my radar. I cannot tell you what procurement they initiated from. I have a requirement for 40 each that contracting is expediting that based on our cost and lead are available from several sources. I have cleared the path with legal and contracting and provided all the supporting documentation.

200. In a 30 March 2012 email, QAD-3 told LMS-1 and others that:

I spoke to [DLAA NI CO], yesterday. He stated, ". . . we cannot use the current bearings, and they will probably have to be DRMO'd"³⁸ and then he showed me the requisition for 40 of these bearings that I assume will go to FISC today. This is in line with DLAA-1's comments below.

³⁸ Defense Reutilization Marketing Offices dispose of surplus DoD property.

Also keep in mind when the new lot of 40 shows up, they will probably not come with engineering/quality documentation (OEM certification). So we will need to get the engineers whatever they need to certify them ASAP.

201. In his reply email later that day, LMS-1 asked: "If the new lot of 40 bearings (P/N 5201KD) that are coming are manufactured outside the U.S. or Canada, will we be able to use them with a signed off REI?"³⁹

202. On 10 April 2012, LMS-1 sent an email to QAD-3 and others that said:

Forty Seven (47) T-34 actuator bearings P/N 5201KD arrived on Monday/April 9th. It was confirmed today that the bearings were manufactured in Japan. Shop 93301 has an REI in work. As we prepare to move forward, the attached question remains unanswered; Is a signed REI all that is required by QA to authorize the use/installation of the Japan manufactured bearings PN 5210KD into T-34 actuators?

203. By email dated 11 April 2012, LMS-1 informed QAD-3, QAD-2, FRCSW P-1, DLAA NI CO, DLAA-1, and others of his conversation with QAS-Super and Complainant earlier that day, stating:

I spoke with our Quality Assurance representatives (QAS-Super/Complainant) today that support Shop 93301. We discussed the plan forward with the REI on the forty seven T-34 actuator Japan/bearings P/N 5201KD that DLA just received. QA informed me that a "waiver IAW the DFAR would be required in addition to the REI. Request guidance in acquiring a "waiver" that will allow us to use foreign bearings in accordance with the DFAR.

204. DLAA-1's 11 April 2012 email reply to the same people stated:

This was the follow up to the verbal legal [FLC Atty] and I had on bearings. The procurement we processed was under the \$3000 simplified acquisition process. The attached email⁴⁰ is from FLC legal. We processed this through FLC

³⁹ A request for engineering instructions/temporary engineering instructions (REI/TEI), NAVAIRDEPOTINST 5605.5, is a form FRCSW and others use to ask and answer technical or engineering questions.

⁴⁰ Referring to FLC Atty's 26 March email to him, copy to FLC Sup ContOff, that stated "Keep it under \$3,000 and we do not have to worry about Buy American Act either!"

contracting which verified the legality of the buy American and these bearings were purchased to milspec / OEM certification. I believe the required quantity was 14 and the procurement we received was 40+ each or one year supply.

205. In a follow-up email that day, DLAA-1 stated "Attached is the copy of the FLC contract if anyone is questioning the legality of this procurement." The attachment was the 6 April 2012 contract, which did not include the required DFARS contract clause.

Pertinent Provisions of FRCSW Quality Manual

206. Our attention now shifts to the May 2012 FRCSW QA management decision to install the foreign-made bearings purchased under the 6 April 2012 contract in the six T-34 actuators that were awaiting overhaul.⁴¹ The evidence clearly shows that Complainant and his QA supervisor, QAS-Super, believed that FRCSW should not use them because no waiver existed. The evidence also establishes that QAD-3 and QAD-1 believed the FLC Atty email stating that it would be okay to purchase the bearings if the purchase price remained below \$3,000.00 was a "legal opinion" that they could rely on. The evidence does not establish, however, whether any of the participants in the ensuing debate understood they were basing their opposing views on different laws and different implementing DFARS provisions.

207. To some extent, the discussions in May turned into a debate over the responsibility of a QAS to determine whether parts used by FRCSW were obtained in accordance with applicable acquisition laws and regulations. The Complainants and QAS-Super insist that this is an important part of their job and this is why they opposed using the Japanese-made bearings. Eventually, QA management, including QAD-3, QAD-1, and QAD-2, took the position that a QAS is only responsible for determining whether the parts and work meets technical requirements. To help resolve this issue, we briefly address pertinent provisions of FRCSWINST 4855.1A, Quality Program Manual (QA Manual), dated 13 September 2012.

208. The stated purpose of the QA Manual is to "establish and update the [FRCSW] Quality Program policy and procedures to control and continually improve all FRCSW products, processes

⁴¹ An email indicates that FRCSW received these bearings on 9 April 2012.

and services, per [the Naval Aviation Maintenance Program or NAMP]. The QA Manual applies to all "depot-level maintenance civilian and military personnel assigned to or attached to FRCSW," who "shall comply with the quality procedures contained in this manual and those applicable in reference [the NAMP]."

209. Chapter 16 is entitled "Contracting." The introductory paragraph states: "Increased emphasis on contraction [sic] necessitates establishment of uniform guidelines and procedures to control quality and ensure compliance with the Federal Acquisition Regulation (FAR)." Other sections expressly require that FRCSW comply with provisions of the FAR in addition to quality and material requirements.

210. Chapter 16 requires "cognizant FRCSW personnel" to analyze contract requirements and represent FRCSW interests in the solicitation and award process. It specifically requires that "Industrial Quality and AIRSpeed Department" (the formal title of the QA Department) personnel:

- (1) Represent the Industrial Quality and AIRSpeed Department requirements during contract development, review, and acceptance.
- (2) Review RFP (Request for Proposal)/SOW documents, records and related data ensuring compliance with applicable instructions, regulations, etc.
- (3) Ensure contract deliverables are in compliance of applicable agreements, e.g., Contract Data Requirements List (CDRL), Contract Line Item Numbers, (CLINS), and Task Orders.
- (4) Develop quality Assurance Plans (QAPs) to ensure contract compliance and incorporation of all quality requirements.

211. On 9 May 2012, LMS-1 sent an email to QAS-Super and FRCSW ML-1, an engineer in the FRCSW Materials Lab. He copied others, including Complainant. He stated:

[QAS-Super], I spoke with [FRCSW ML-1] yesterday IRT his REI response. [FRCSW ML-1] was going to give you a call stating that the T-34 actuator bearings P/N:5201DK were evaluated, lubed and ready for use.

[FRCSW ML-1], can you amend your response to the REI-COMP-2012-0597-01 stating that the bearings have been evaluated,

lubed and are RFI. If you cannot amend the REI, let us know and we'll submit another REI. Please advise.

212. On 9 May 2012, QAS-Super, Complainant's supervisor, sent an email to LMS-1. He copied Complainant and others. He stated:

[LMS-1], Per TEI-COMP-2012-0597-01, Engineering stated applicable waivers need to be obtained per DFARS. I don't give an OK to Production on whether they can start work on a component. Our position is to ensure regulations are complied with. It appears Materials Engineering has the same position.

213. On 14 May 2012, QAS-Super sent an email to QAD-2, with a copy to QAD-1. He stated:

FYI, The issue and position of Quality Assurance, Code 54300, is that no one has addressed, in writing, with a reference, that foreign procured / purchased aeronautical bearings are acceptable. Bearings in question were manufactured in Japan. No one has provided my code a reference or something in writing that overrules DFAR 252.225.2016. Restriction on Acquisition of Ball and Roller Bearings simply states that they are to be manufactured in the U.S. and/or Canada. This is the only obstacle that keeps this issue at a standstill. It has been our position for months. We have not questioned Engineering's position that they meet 'Fit, Form, and Function' specifications. Only the legality of where they were manufactured.⁴²

214. QAD-1 forwarded QAS-Super's email to QAD-3, and later on the same day, QAD-3 forwarded it to DLAA-1, copying QAD-2 and FRCSW P-1 at FRCSW. QAD-3 said:

[DLAA-1], This, below, is why I need the contracting officer to make a statement.

215. We found no evidence of the requested "contracting officer" statement, but on 15 May 2012, QAD-3 sent an email to QAS-Super and copied other QA leadership including QAD-2, QAD-1 and FRCSW

⁴² The DFARS provision QAS-Super cites is the contract clause that DFARS Section 225.7009 requires to be inserted in contracts that involve the purchase of bearings as end items pursuant to the DoD Appropriations Acts. It does not implement the BAA, although both are clearly "domestic content" provisions. This clause does not mention a "micro-purchase" threshold since the DoD Appropriations Acts do not allow micro-purchases absent a waiver.

P-1. He also copied DLAA-1 at DLAA NI and two FRCSW Engineers. QAD-3 said:

[QAS-Super], please see attached. We have made all involved more than aware of the acquisition requirements involved in this case. While I will continue to seek written concurrence from the contracting officer, this is sufficient information to clear the use of those bearings that have been inspected and repackaged by our bearing experts. Please ensure the repackaged bearing are released for use today and facilitate getting the remaining bearings from this buy to the materials lab for inspection.⁴³

216. QAS-Super responded to QAD-3's email the same day, stating, simply: "Done.....r/ [QAS-Super]."

217. This response implies that the Complainant's supervisor, QAS-Super, was now satisfied that the Japanese bearings could be used. In his interview, on 18 December 2012, QAS-Super said that he was agreeing to accept the Japanese bearings because he was tired of the situation. "Based on what he [QAD-3] forwarded me, I just got to the point where I was just really tired of this whole thing, so I said, okay, done." QAS-Super went on to tell the investigators that he spoke to Complainant early that next morning, the 16th, and Complainant convinced him to change his mind and not accept the bearings.

May 16 Conversations with Complainant

218. In his letter to OSC and in his 4 December 2012 interview, Complainant said that around 0800 on 16 May 2012, he had a phone conversation with QAD-3 about signing off on the paperwork necessary to release the bearings for use in the T-34 actuators. Complainant stated in his interview:

I tried to tell him when he called me up to get me to stamp off that paperwork and I asked him, do you have official government documentation stating that we can use the foreign bearings? And there was a big silence on the phone. And I said, is this conversation over? He goes, I got to go, and he hung up.

⁴³ The attachment was a pamphlet discussing the BAA. Although he copied DLAA-1 at DLAA NI, QAD-3 did not copy FLC ContOff, the FLA SD contracting officer who executed the April 2012 contract for the Japanese-made bearings for use in the T-34 actuators awaiting overhaul.

And I go, well, that's real professional here. Now, obviously, I'm the low man on the totem here and I understand that. Again, I was adamant about it. I told him I wasn't going to do something. Why don't you ask me why? Why don't you ask me why I'm not going to - I tried to tell him, I said, according to the DFARS, it states there that we can't be using foreign bearings without a waiver. Didn't want to hear it. He continued on, you got to stamp off the paperwork. I go, Commander, I'm not going to stamp anything off, so find someone else or whatever, but I'm not going to do it.

219. Around 1000 on the 16th, QAD-1 called Complainant into a meeting with QAS Sr-1, a Senior QAS; QE-1, a Quality Engineer; and QAS Sr-2, a QA Supervisor. According to Complainant, QAD-1 asked Complainant if he would sign off on the paperwork. Complainant said he would not do so unless he could see some documentation that demonstrated compliance with the contract clause at DFARS 252.225-7016. QAD-1 responded that the Buy American Act permitted the purchase. Complainant says he "tried" to show QAD-1 DFARS Section 225.7009-2, but QAD-1 would not look at it and gave Complainant a "direct order" to sign the paperwork. Complainant said he would do so if he could see some "official government documentation that states that we can use foreign bearings." QAD-1 said he would give Complainant until the next day to comply with his "direct order" and would "start paper work" on him if he did not. Complainant asserts that when he asked QAD-1 if he was threatening him with disciplinary action if he did not comply, QAD-1 simply said that he had until the next day to sign the paperwork.

220. On 31 May 2012, QAS Sr-2 provided a written statement about the 16 May 2012 meeting.⁴⁴ Without indicating who made the statement, he said that someone explained at the meeting that there is a "waiver" within the Buy American Act that allows for "exceptions" and the bearings "fell within that waiver." QAS Sr-2 said Complainant "vigorously disagreed and voiced strong objections to their use even though engineering had signed off on the use and the DLA legal folks had said ok." According to QAS Sr-2, QAD-1 then asked Complainant "what it would take for him to buy off on the bearings and stamp off the document." QAS Sr-2 says Complainant said he would not buy off on their use because "he felt that the bearings violated the "Buy American

⁴⁴ QAS Sr-2's statement appears in the package prepared before QAD-1 issued Complainant a letter of reprimand that is discussed later in this report.

Act." QAD-1 then "directed" Complainant to sign off on the paperwork and Complainant "became very agitated and voiced his strong objection," declared the meeting was "over" and left the office.

221. Around 1300 on the 16th, QAD-1 tried to contact Complainant to see if he had decided to sign the paperwork, but could not locate him then, or later in the afternoon.

May 17 Conversations with QAS-1

222. During his first interview, on 17 December 2012 interview, investigators asked QAS-1 what he knew about the ball bearing situation prior to a 17 May 2012 meeting in QAD-3's office, and what he learned during the meeting. QAS-1's reply included the following statements:

So, I really wasn't really exposed to the bearings. I was never brought in and talked - even though I was the back-up of [Complainant] the individual who was involved, I was never really brought in with management or that individual [Complainant] and briefed or anything. I just heard it secondhand. Okay, everything was secondhand."

223. On 17 May 2012, Complainant and QAS-Super did not come to work. After learning neither was present to process the paperwork, QAD-3 called a meeting in his office with several other FRCSW QA staff members, including QAS-1, a QAS who also reported to QAS-Super. QAS Sr-1, another QAS and the supervisor fill-in for QAS-Super, QE-1, and QAD-1 participated in the meeting, and QAD-2 also may have been present.

224. QAS-1 understood that the reason QAD-3 asked QAS-1 to meet with him on 17 May 2012, in the absence of Complainant and QAS-Super, was that QAD-3 wanted someone to sign the paperwork so the installation of new bearings in the T-34 actuators then in the shop could proceed. QAS-1 told the investigators that QAD-3 said words to the effect that "we aren't leaving until you sign this document." However, QAS-1 was not familiar with the issue. After further discussion, QAD-3 allowed QAS-1 to leave so that he could do some further research on this matter. After he reviewed the BAA materials and spoke to FLC Atty, QAS-1 signed the paperwork on 17 May 2012.

225. QAD-3 said the purpose of the meeting was to describe to QAS-1 the situation with the Japanese-made ball bearings and their use on the T-34/T-44 landing gear overhaul production line. At the end of the meeting, QAD-3 asked QAS-1 to stamp and

certify the paperwork accepting the bearings for use in T-34 actuators being repaired and overhauled.

226. During his 17 December 2012 interview, QAD-3 said he had a big stack of emails, a copy of the BAA pamphlet he had emailed QAS-Super on the 15th, and other materials. He said he went through this material during the meeting. He stated " - well, first, I explain the whole deal and then, you know, go through all this stuff." He stated that he gave it all to them in the meeting and "they took it to their office over there and they went through all of it and came back and they signed off the bearings, but not before they had actually called and spoke to [FLC Atty] herself and went through all the paperwork."

227. During his second interview, on 20 February 2013, QAS-1 said that during the 17 May 2012 meeting, QAD-3 showed him a BAA pamphlet. QAS-1 said that upon seeing the pamphlet, he decided that he would not stamp and certify the paperwork until he had a chance to read it and conduct his own research. During the meeting, someone told QAS-1 about the "legal approval" FLC Atty provided in the form of an email to DLAA-1 on 26 March 2012, and provided him FLC Atty's telephone number.

228. QAS-1 went on to tell the investigators that he conducted his own research by looking at the BAA and the FAR. He also had a phone conversation with FLC Atty and she again said the procurement was proper. He went on to state that when he felt his research was complete, he decided that it would be okay to stamp and certify the paperwork but qualified his decision by saying that he felt he was only certifying suitability, and not the legality of the purchase itself.

229. On 17 May 2012, QAS-1 stamped and certified product work order paperwork on a T-34 actuator that was being rebuilt with a Japanese ball bearing during production on the T-34/T-44 overhaul product line.

Complainant's Letter of Reprimand and Grievance

230. On 21 May 2012, QAS-1 provided a written statement concerning a conversation he had with Complainant around 0600 that morning and a meeting he had with Complainant and QAS-Super shortly thereafter.⁴⁵ QAS-1 stated that Complainant and QAS-Super started to "interrogate" him about why he had signed the

⁴⁵ QAS-1's statement also appears in the materials supporting Complainant's letter of reprimand.

paperwork for the bearings. QAS-1 tried to defend his actions based on his research on the 17th, but Complainant and QAS-Super became more and more agitated. QAS-Super began yelling at him, and Complainant, although he started off calmly, "soon started to shake" and worked himself into a "rage." This made QAS-1 uncomfortable, so he decided to let Complainant "vent and belittle me" until QAS-Super started in on him again. QAS-1 concluded his statement by saying "I do not feel comfortable working with [Complainant] when he is in a rage."

231. On 29 June 2012, QAD-1 issued Complainant a letter of reprimand for refusing a "direct order" to "accept T-34 bearings for use." The "investigation form," dated 30 May 2012, indicated that initially, Complainant was investigated for failing to report to QAD-1's office, for being AWOL on the afternoon of 16 May 2012, and for acting unprofessionally toward QAS-1 on 21 May 2012.⁴⁶ Apparently, QAD-1 accepted Complainant's responses to the last three charges, because the single reason set forth in the reprimand letter is "failure to follow supervisory instruction." The specification states:

On 16 May 2012, I directed you to accept T-34 bearings for use. You refused to stamp the document to buy the bearings. You failed to comply with my instruction.

232. In his response to the charge of failing to obey a direct order, Complainant referred to the Buy American Act, but stated he had tried to show QAD-1s the contract clause at DFARS 252.225-7016 and DFARS Section 225.7009, both of which implement the DoD Appropriations Act restrictions.

233. Complainant filed a grievance. On 26 September 2012, he and his Union Representative, the Second Complainant, who is the President of NAGI Unit 8, met with FRCSW P-1, the FRCSW Production Support Director, to discuss the grievance. On 12 October 2012, FRCSW P-1 issued a letter denying the grievance, stating:

As a quality Assurance Specialist, you were assigned to the bearings project. You played an active role in project meetings and research into the feasibility of the bearings order. The direct order to procure the bearings was a lawful order issued in accordance with the Buy American

⁴⁶ QAS-Super also received a letter of reprimand for his conduct toward QAS-1 on 21 May 2012. He did not file a grievance.

Act. Further, the order was supported by legal and engineering guidance.

Complainant's August 2012 Emails

234. Complainant provided the NAVAIR IG team an email dated 8 August 2012 that he sent to SME-2 in OSD. His email explains the situation with the ball bearings and states his understanding of the laws and regulations. The last sentence of the email states: "I believe that what is happening here is against the law, but I was hoping that you could maybe clear up the confusion."

235. Complainant provided the NAVAIR IG team SME-2's email reply, also dated 8 August 2012, in which SME-2 says there is no exception for micro-purchase for ball bearings bought as end items. She went on to explain that waivers are available as provided at DFARS 225.7009.4. The information SME-2 provided Complainant in August is similar to the information SME-3 provided to the FRCSW CO and others in her email of 26 March, 2012. Complainant did not forward this email to anyone at DLAA NI or FRCSW; he attempted, unsuccessfully, to make a presentation using the information she gave him during the grievance process.

236. The Complainants never made a formal request to discuss their issue concerning the use of foreign ball bearings and the need for a waiver with the Commanding Officer, Executive Officer, Command Counsel, or any other senior leader in the QA Department or the FRCSW Command. Once again, Complainant attempted to use the grievance procedure for this purpose, but was not successful.

237. No evidence was discovered to show that QAD-3, QAD-1, or other QA management officials offered to sit down and discuss openly the concerns Complainant and his supervisor, QAS-Super, had about the use of foreign-made bearings in the absence of a waiver. There is also no evidence to suggest that QAD-3, QAD-1, or other QA management officials attempted to hold a meeting in which either the FRCSW or the FLC SD attorney could listen to the arguments QAS-Super and Complainant made about DFARS Section 225.7009 and address them.

238. We found no evidence that suggests anyone at FRCSW deliberately would have used foreign-made bearings if they knew their purchase violated a law or regulation. We note that FRCSW leadership decided not to use the foreign-made bearings FRCSW received from L-3 because of concerns about their purchase.

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FLC SD September 2012 Contract

239. On 28 September 2012, FLC Sup ContOff, Director, FLC SD Industrial Support Division, executed Contract N00244-D-12-0028, in the amount of \$1,802,509.13. FLC Sup ContOff is FLC ContOff's supervisor. She signed this contract because the award amount exceeds FLC ContOff's contracting authority limit.

240. The contract contained at least one line item for bearings used in trainer aircraft. Because the contract amount exceeded \$650,000, it required legal review in accordance with FLC SD policy, and FLC Atty provided that review. She recommended including the contract clause in DFARS Section 252.225-7016.

241. In an email dated 1 May 2013, FLC Atty told the investigators that she recalled that there was some discussion of the need to include this clause because some FRCSW personnel expressed the opinion that it was not necessary. FLC ContOff brought the question to FLC Sup ContOff, the other FLC SD attorney and FLC Atty, who agreed the clause was required. FLC Atty observed that the value of the contract was clearly above any micro-purchase or simplified acquisition threshold, implying that the question of whether the clause was required for all bearing purchases, regardless of amount, did not become an issue.

242. In her email, FLC Atty stated that when she was providing advice about bearing purchases in March 2012, she anticipated that someone would have asked her to review the contract before it was executed. That never occurred. FLC Atty went on to say that she believed she may have discovered "the error" [of saying a waiver would not be required if the purchase price did not exceed \$3,000.00] had she been given the opportunity to actually review the contract documents, rather than simply express an opinion in an email. As we noted earlier, FLC ContOff did not ask FLC Atty to review the April 2012 contract before he signed it because it was below the amount that required a legal review at FLC SD, overlooking the requirement for a legal review in NAVSUPINST 5801.1.⁴⁷

FLC SD Actions After Receiving OSC Tasking Letter

243. NAVINSGEN forwarded the 13 November 2012 OSC tasking letter to the NAVAIR IG on 20 November 2012, requesting that the NAVAIR

⁴⁷ FLC ContOff may not have realized the July 2011 contract required the purchase of foreign-made bearings; he knew the April 2012 contract did.

IG forward it to FRCSW, which has a Command Evaluation Office that performs IG functions. CE-1 is the Command FRCSW Evaluator. CE-1 forwarded the OSC tasking letter to others at FRCSW and FLC SD and on 26 November 2012, DLAA-1 emailed CE-1, copying the DLAA NI Commanding Officer, stating:

DLA Aviation in San Diego researched the availability of the subject bearings and could not find an American manufactured source. This included the bearings provided by the Original Equipment Manufacturer (OEM). Our main concern was in the quality of the product and adhering to the federal acquisition rules. Both of these issues were addressed as follows:

Quality - Bearings were procured as destination inspection. This means they were inspected at the FRC and given to engineering in the materials lab to be tested and were accepted.

Acquisition rules - The procurement was placed by a NAVY warranted contracting officer at FLC San Diego. This was done properly with Navy legal oversight. The contract is attached.

T-34/T-44 are a commercial application and the OEM is Hawker Beachcraft not considering military application.

244. CE-1 forwarded DLAA-1's 26 November 2012 email to FRCSW Atty, the FRCSW attorney, who forwarded it to FLC Atty. Later on the 26th, FLC Atty replied to FRCSW Atty, copying CE-1, FLC ContOff, and DLAA-1, among others. She said:

The acquisition of Chinese ball bearings at or above the micro-purchase threshold is a fiscal law violation and must be reported. There is no exception above the micro-purchase dollar threshold - unless the Secretary of the Navy determines that there should be an exception and issues a formal D&F.

Having said that, it would appear that the items purchased were below the micro-purchase threshold - \$3,000. Per DFARS 225.7002-2, Exceptions: "Acquisitions at or below the simplified acquisition threshold." See DFARS 225.702-2(a).⁴⁸

⁴⁸ FLC Atty is referring to DFARS BAA provisions.

We cannot split requirements to fit within the dollar thresholds. If more Chinese made ball bearings are needed this fiscal year and the requirement exceeds \$3,000, a formal request to the Secretary of the navy may be prepared in accordance with DFARS 225.7002-2(b) for Secretarial-level approvals.

We may have dodged a bullet, all.

245. Later on the 26th, FRCSW Atty replied "I believe what we bought was sufficient for quite a while. We understand that if we need more, we will go to FLC to fulfill our requirements."

246. On 27 November 2012, FLC Atty sent the same group of people another email, stating: "All, you may not be able to buy the ball bearings if the requirement exceeds \$3,000 - the Berry Amendment cannot be waived locally - only at Secretarial level."

247. Later on the morning of the 27th, FLC Atty sent the group another email in which she stated:

[FRCSW Atty]: We may need to do more research. It appears that there are additional restrictions on ball bearings and the micro-purchase threshold exception may not in fact apply. See DFARS 225.7009-2.⁴⁹

I have been contacted by NAVSUP IG - they asked for a copy of the contract, which I will provide with this email.

248. DLAA-1 then sent FLC Atty and FRCSW Atty an email in which he asked: "Do you think we need to begin the waiver process?"

249. In her reply, also on the 27th, FLC Atty said:

[DLAA-1], I think it would be helpful to start the ball (no pun intended) rolling. So the answer is: Yes. If indeed there is no exception for micro-purchases, then we do need to get a waiver since there is no way to fix the appropriations law violation otherwise.

250. In his 27 November 2012 reply, DLAA-1 said to FLC Atty, without copying FRCSW Atty:

⁴⁹ Now FLC Atty is referring to the DoD Appropriations Act DFARS provisions she first mentioned in her early March 2012 emails.

Will do, remember this was a commercial application and the end item would have been a landing gear not a bearing. Reference exception DFARS 225.7009-3.

251. FLC Atty's reply, shortly thereafter, in which she did copy FRCSW Atty, stated:

No it isn't - the buy is for the ball bearings, not the actuators. I do remember telling you that the commercial buy exception DOES NOT APPLY when the end item itself is the ball bearing.

252. On the afternoon of 27 November 2012, FLC Atty sent an email to Counsel, NAVSUP, in which she discussed the investigation NAVINSGEN was conducting pursuant to the OSC tasking letter. She stated, in pertinent part:

The whistleblower claims that I told FRC not to buy the ball bearings. That turns out to be accurate (I found the two emails above that were issued just prior to the April 2012 buy.) While during the course and scope of our discussions, I had opined that the micro-purchase was an exception, the emails sent to FRC clearly indicate that I considered the matter closed and that unless there was a waiver, no ball bearings would be acquired. My last email was March 26, the contract was awarded on April 6.

I was not aware that FRC did come to FLCSD in April, 2012, and did ask FLCSD to acquire ball bearings from the OEM - (Japanese) at a price less than #3,00 [sic]. Since the buy was a micro-purchase, the contracting officer did not include any clauses, even those required for ball bearings. And, he did not come to me for legal advice - although he may have had assurances from FRC that I agreed that the restrictions did not apply to micro-purchases. The ball bearings are integrated into the air craft and the vendor has been paid.

I have reviewed the DFAR and note that DFARS 225.7009-3 suggests that there is no micro-purchase exception for ball bearings; although, that exception applies to specialty metals.

A flash notice of an Anti-Deficiency Act violation should, in my opinion, be initiated. And, per my direction, [FLC SD] is seeking an after-the-fact waiver.

Background: On or about February/March 2012, I was contacted by [FRCSW Atty], FRC and, among others, [DLAA-1], about the acquisition of ball bearings. During that

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conversation and numerous phone calls, emails, we discussed the limitations on the acquisition of ball bearings. In essence, I was asked if FRC could use ball bearings that had not necessarily been acquired in accordance with DFAR, 225.7001 e. seq. I told them no - but did ask them to buy additional ones them [sic] from FLCSD so that "we could do it correctly."

I was under the impression that ball bearings could be bought at or below the micro-purchase threshold - since the restrictions were found in DFARS 225.7001 without regard to the Berry Amendment. [I even restated this late last night when I learned of the investigation. I corrected myself this am.] I did emphasize then and now how complicated these buys were and are. For example, I clearly indicated from the start that the commercial integration exception did not apply to end-item ball bearing buys.

The last emails sent (in March), indicated that based on DoD's input, I considered the matter closed and that ball bearings would not be bought absent a waiver.

DLAA NI Action After Receiving OSC Tasking Letter

253. In December 2012 or January 2013, DLAA-1 contacted DLA Aviation, Richmond, Virginia (DLAA Richmond), to request assistance in (1) finding U.S.-made bearings or foreign-made bearings for which DLA had already granted a waiver, or (2) obtaining a waiver for the foreign-made bearings FRCSW needs for the T-34/T-44 trainers. DLAA Richmond is the "bearing specialist" for DLA Aviation. Although DLAA Richmond is assisting in this effort, we have been unable to confirm any domestically manufactured bearings will be available through DLAA Richmond identified sources before March 2014.

254. For example, FRCSW and PMA-273 thought someone had ordered a domestically manufactured bearing, suitable for use in the T-34 actuator, that would arrive at FRCSW in July 2013. During the week of 6 May 2013, they learned that the bearings would be foreign-made and therefore the supplier had declined to provide them. We also learned a domestic manufacturer has agreed to produce one of the two T-44 actuator bearings, but they will not become available before March 2014.

PMA-273 Decides to Return to Contractor Support

255. In May 2013, the NAVAIR IG learned that PMA-273 has decided to return the T-34/T-44 overhaul work to a contractor because FRCSW is unable to perform as much work as CNATRA considers

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necessary to meet DON requirements for the aircraft. PMA-273 gave three reasons for the FRCSW shortfall:

First, everyone involved in the transition project underestimated the effort necessary to make the transition from commercial to organic support. Specifically, they did not take into account that FRC would need a contract in place with Hawker Beechcraft, the current manufacturer of the aircraft, for proprietary loads data, and the time necessary to get a contract in place to provide that data was detrimental to the mission.

Second, plans for procuring the commercial parts necessary to perform the overhaul work were inadequate. Because of the commercial nature of the aircraft, NAVICP and DLA had not previously supplied the parts FRCSW needed to perform the work. For example, someone needed to get a list of parts and issue contracts to procure them.

Finally, no one recognized the number of "non-standard" repairs required to maintain these aircraft. PMA-273 gave, as a specific example: "should you discover corrosion beyond the limitations of the existing repair document it is necessary to develop a new procedure that includes concurrence from the OEM."

256. PMA-273 explained that it is in the early stages of the acquisition process, but it anticipates that FRCSW will need to continue performing T-34/T-44 overhaul work through the summer of 2014. To address the lack of domestically-manufactured bearings or a waiver that authorizes DLAA NI or FLC SD to purchase new foreign-made bearings, PMA-273 has made plans to locate old U.S. made bearings that may still be serviceable, and to refurbish and reinstall the bearings that FRCSW removes from the actuators that come to it for overhaul.

Discussion and Analysis

257. During the course of this investigation, many FRCSW personnel attempted to deflect responsibility onto FLC SD, asserting that FRCSW had no responsibility to assure the legality of the bearing purchases. Along those lines, FRCSW QA management argued that neither the QA Department nor a QAS is responsible for ensuring procurements comply with the law. Indeed, more than one witness belittled Complainant's attempts to play lawyer or contracting officer. An excerpt from QAD-1's testimony is illustrative:

Q: Okay. And the reason I'm asking is because [Complainant's] purpose for refusing to [sign the paperwork] is because he claims that he wasn't shown proof in some type of paperwork that was, in his mind, required in order to do that. And he mentions waiver. There's a lot of mention of REI inspection plus some type of waiver. Is that correct?

A: Well, in the Buy America Act, there is a waiver that you can use. We didn't show him that because we didn't use that. But, you know, I don't know what [Complainant] thinks in his mind should have been given to him. . . . But his leadership was comfortable with the fact that we do this. Again, I fall back on the fact that he is neither a lawyer nor an acquisition specialist, and we felt that we had done due diligence. At that point in the game, it was time for [Complainant] to be a quality - you know, a quality specialist and buy off on the work. I can't think of any other way to put it, Captain. [Underlining added.]

258. Given the division of responsibilities between FRCSW, DLAA NI, and FLC SD, we agree that FRCSW's only obligation was to use "due diligence" to assure compliance with applicable law and regulation. We framed this allegation in that manner, and we believe FRCSW exercised due diligence right up to the point where SME-3 told the FRCSW CO, in her 26 March 2012 email, that waivers were required to purchase foreign bearings and provided him a copy of DFARS Section 225.7009. At that point, the FRCSW CO became responsible to carefully consider her advice, and make sure that everyone else involved in this matter, including his contracting, legal, and supply agents at FLC SD and DLAA NI explained to him why her advice was erroneous and he could disregard it. Because he did not, we conclude he failed to exercise due diligence.

259. We agree with FLC Atty's assertion that the FRCSW CO jumped the chain of command by writing directly to SME-2.⁵⁰ Moreover, he should have let FLC Atty handle the matter. Having jumped in, however, he created the duty reasonably to ensure compliance with procurement regulations that FRCSW may not have had have absent his intervention. And while we do not believe that waivers are as hard to get as SME-3 indicated in her email, it is very clear that from that point forward FRCSW, DLAA NI, and

⁵⁰ The same might be said of FLC Atty, but if she did not ask NAVSUP Office of Counsel for assistance, at least she spoke to an attorney in ASN (RD&A).

FLC SD became focused on finding a way to avoid making a waiver request.

260. Although we found no evidence indicating that QAD-3, QAD-1, or QAD-2⁵¹ received SME-3's email, we also conclude due diligence required that they do more than they did to address QAS-Super's and Complainant's attempts to get them to consider DFARS Section 225.7009. Had QAD-3, QAD-1, or QAD-2 been more prudent, they would have invited Complainant and QAS-Super to discuss those concerns with FLC Atty at some point in March, April, or May 2012.

261. Moreover, having read the provisions of the FRCSW Quality Manual, we conclude that a fair reading demonstrates an intent to impose on QA Department personnel, from the Department Head down to each QAS, a duty to take reasonable steps to ensure FRCSW complies with applicable acquisition laws and regulations. Like the FRCSW CO, had QAS-Super and the Complainant not taken the initiative to research the matter and identify the DoD Appropriations Act restriction, we likely would have found that everyone in the FRCSW QA Department exercised due diligence. But under the circumstances we find their superiors had a duty to fairly consider the concerns they raised and we conclude that they did not.

262. In reaching our conclusion, we do not disregard the evidence establishing that QAS-Super and Complainant became argumentative and rude, to the point of shouting and belittling those who disagreed with them. We do not excuse that conduct. That said, people who feel others are ignoring their concerns are likely to behave that way; it is a common plight of whistleblowers.⁵² In this case, we believe the QA Department leadership properly addressed QAS-Super's rudeness to QAS-1, and their acceptance of Complainant's denials that he was rude to QAS-1 was not unreasonable. Likewise, we think reasonable the QA Department leadership decision not to pursue the charge that Complainant had been absent from work without authorization, or the charge that he was disrespectful to them during meetings in which he vehemently disagreed with them or walked out.

⁵¹ In his interview, QAD-2 expressed agreement with the position QAD-3 and QAD-1 took, but we found no evidence indicating he took any action.

⁵² QAS-Super never became a whistleblower, and Complainant was not before he contacted OSC. The courts have made clear that information an employee provides to other office personnel or to "chain of command" superiors as part of the employee's official duties are not "disclosures" protected by federal civilian employee whistleblower protection statutes.

Conclusion

263. The allegation that FRCSW leadership mismanaged the T-34/T-44 landing gear actuator production process by failing to use due diligence in assuring that FRCSW Artisans only installed bearings purchased in conformance with U.S. law and regulations is substantiated.

Observations

264. When this investigation started, the investigative team understood that FLC SD, rather than FRCSW, awarded the specific contract identified by OSC. Because it appeared that FRCSW simply relied on FLC SD for contracting support, including legal advice, we questioned the need for an inquiry into FRCSW mismanagement. At most, we thought it would be appropriate to examine the reasonableness of the way management handled Complainant's attempts to bring his concerns to his superiors' attention. As we developed more evidence about this program, however, we decided that a more extensive review of the events surrounding this program could provide DON useful lessons. Our detailed recitation of facts should enable the reader to make his or her own determination about mismanagement, but we think a few observations to guide that analysis may be helpful.

265. The facts describing the PMA-273 decision to bring the landing gear component work "in-house" may suggest insufficient acquisition planning to some readers. We caution them not to conclude that PMA-273 or others at NAVAIR mismanaged that effort based on the limited evidence this report presents, as that acquisition effort was not the focus of this investigation. The effort required to transition a commercial aircraft support program to organic support presents unique problems, not all of which reasonably could be anticipated. To prevent similar situations from arising in the future, NAVAIR should consider conducting a management review of the acquisition decisions that resulted in the transfer of the program from commercial to organic support, and the transition process itself.

266. Having said that, we also must commend the naval aviation community, PMA-273 in particular, for having the courage to acknowledge the current FRCSW overhaul program simply is not meeting the needs of naval aviation, and for taking action to bring the program back on course. However, we are troubled by the possibility that inadequate contracting resources may have contributed to the decision to move the work in-house, and recommend that NAVAIR carefully examine this issue and make

every effort to increase its contracting capacity if current resources are inadequate to meet the DON's needs.

267. The length of time that FRCSW took to reach the point at which it was ready to go into full production appears exceedingly long, especially given the fact that the L-3 contract expired in March 2011. FRCSW learned of the new requirement in July 2010, but was not ready to go into full production for landing gear struts until October 2011, and, for actuators, it was not ready until April 2012. This lengthy preparation period certainly reflects the difficulties FRCSW faced in taking on this commercial effort, but we suggest that FRCSW and its parent commands study these events in order to determine whether the FRC community can more rapidly prepare to take on new work in the future.

268. Noting that Complainant first raised his concerns about the use of foreign-made bearings in April 2011, we were surprised that the facts we developed demonstrate that DLAA NI did not start looking for domestic sources of actuator bearings until March 2012. By then, FRCSW already had work in-house awaiting bearings before FRCSW could return landing gear components to the fleet. The reader must keep in mind that, even if the assumption that only the BAA applied to these bearings purchases was correct, that statute still requires the purchase of domestic bearings. Any foreign-made bearing purchase over \$3,000.00 would have required a waiver.⁵³ Based on what we know now, had the bearing acquisition issue been addressed properly in April 2011 when Complainant first raised the issue, it is likely that someone in the DLA community could have identified a manufacturer willing to produce the necessary bearings domestically. In that case, even with a one-year lead-time, the bearings could have become available by April 2012, when FRCSW needed them. In the alternative, there should have been ample time to process and approve a waiver request.

269. Had QA Department Leadership given Complainant and QAS-Super a reasonable opportunity to explain their concerns in March and May 2012, the April 2012 contract violation and this investigation may not have been required. We understand that

⁵³ The decision to reduce the number of bearings purchased by the April 2012 contract in order to reduce the price to an amount less than \$3,000.00 could be viewed as an attempt to split purchases to avoid the BAA restrictions. We did not have sufficient time to determine whether the original number of bearings specified was in excess of FRCSW's needs, but given the subsequent May and October 2012 DLAA NI purchases, we suspect it was not.

Complainant was only a GS-9, was not an acquisition professional or a lawyer, and that some people considered him a "difficult" employee. Nonetheless, as a QAS, his concerns deserved fair consideration.

270. We think the main reason Complainant did not get a fair hearing about his concerns was that in late March many people concluded, perhaps erroneously, that it would be difficult, if not impossible, to obtain a waiver based on SME-3's email to the FRCSW CO. In May, FRCSW was trying to complete work on the T-34 actuators it was overhauling by installing the new foreign-made bearings that had been available since early April, and the QA Department was rapidly becoming the reason for delay. Consequently, QA Management, none of whom were lawyers either, elevated a single line in FLC Atty's email to DLAA-1 to the status of a carefully reasoned and detailed "legal opinion," as if it had actually addressed the DFARS provisions that QAS-Super and Complainant identified rather than the BAA to which FLC Atty referred. We think that was unreasonable under the circumstances, too. Had her email provided unwelcome advice, we think QA Management would have had little hesitation in downplaying or ignoring a one sentence "legal opinion."

271. With the benefit of 20-20 hindsight, we see that Complainant and QAS-Super were correct and FLC Atty was wrong. But FRCSW QA Management apparently never considered holding a meeting where Complainant and FLC Atty could discuss the matter. To compound the matter, when Complainant properly refused to obey what he correctly perceived was an improper order, QAD-1 issued him a letter of reprimand because he refused to obey a direct, lawful order. We believe Complainant should receive an apology and the letter of reprimand should be removed from his personnel file, even though he is retired. He is entitled to have a clean record.

272. FRCSW practices have been the subject of three other OSC 5 U.S.C. § 1213 investigations. In 2002, NAVINSGEN determined the FRCSW Voyage Repair Team had produced nonconforming welds in the catapult hydraulic piping systems of five aircraft carriers.⁵⁴ These defects were related, in part, to violations of the applicable FRCSW Quality Manual and the practice of allowing personnel to make and inspect welds for which they had not been trained and certified, or who had allowed their

⁵⁴ See OSC DI-00-0139, NAVINSGEN 20020058. At that time, FRCSW was called the Naval Aviation Depot, North Island.

certification to lapse. In 2006, NAVINSGEN determined Artisans were not using the proper torque screwdrivers to tighten screws on F/A-18 generator control units and there was an unreasonable delay in obtaining these tools after the discrepancy was brought to the attention of management, including Quality Department personnel.⁵⁵ In 2012, NAVINSGEN undertook a detailed study of the FRCSW Concurrent Certification Program, which also found questionable practices in the QA Department that suggest a disregard for the importance and independence of the QAS. FRCSW stresses the importance of the QAS and the QA program to its enterprise, but this current investigation also raises troubling questions about the management of the FRCSW QA program that we have not observed in other FRCs.

Recommended Actions

273. We recommend that FRCSW remove the letter of reprimand and associated documentation from Complainant's record and write him a letter acknowledging that the purchase of foreign-made bearings at issue in this case violated DoD Appropriations Act restrictions.

274. We recommend that NAVAIR and COMFRC review work processes at all FRCs to determine the extent to which Quality Department personnel should be responsible for determining compliance with acquisition rules and regulations, and amend or clarify existing guidance such as that contained in Chapter 16 of the FRCSW Quality Manual to avoid future questions about QA personnel functions and duties in this area.

275. We recommend that NAVAIR and COMFRC review FRCSW QA policy and practice in light of the four OSC cases in the last 10 years that raise significant QA issues. While we believe that procedures, such as Quality Assurance Councils, are in place to surface and address QAS concerns, it is important that FRCSW leadership be committed to the proposition of supporting the QAS in the performance of his or her duties, or quality will suffer.

276. We recommend that NAVAIR and COMFRC examine the process that FRCs use to get new work into production in order to identify possible efficiencies that will reduce the length of time required to reach the full production stage.

⁵⁵ See OSC DI-06-0782, NAVINSGEN 200600171, NAVAIR H2006-026. At that time, FRCSW was called the Naval Air Depot, North Island.

277. We recommend that NAVAIR review the landing gear overhaul acquisition process, with emphasis on the adequacy of its acquisition and contracting resources in light of the difficulties PMA-273 encountered in awarding a contract to replace the L-3 contract that expired in March 2011.

278. We recommend that SECNAV waive the DoD Appropriations Act restrictions for bearings purchased under the July 2011 and April 2012 contracts if he concludes there were no domestic sources available at those times. His waiver would make 22 T-34 bearings immediately available and avoid the risk that as many as seven T-34 aircraft may go out of service in June 2013.⁵⁶

279. We recommend that SECNAV grant such additional waiver requests as may be necessary to permit the timely purchase of any additional bearings FRCSW may require for T-34/T-44 actuator overhauls until (1) DLA begins to grant waivers for them; (2) domestic-made bearings become available; or (3) NAVAIR returns the overhaul work to a contractor.⁵⁷

280. We recommend that, given a lack of a domestic manufacturer for at least one of the bearings, ASN (RD&A) consider whether to recommend amending the DoD Appropriations Act to allow the direct purchase of foreign-made bearings in limited quantities each year without first obtaining a waiver. One way to do this would be to limit the applicability of the statute to purchases in excess of \$3,000.00 in a manner similar to the BAA.

Allegation Four

That on 17 May 2012, FRCSW Quality Assurance Specialist QAS-1 stamped and certified documents the FRCSW QA Leadership considered necessary to authorize Artisans to use bearings manufactured in Japan for the overhaul of T-34 actuators even though he knew that the bearing purchase violated DFARS 225-7009, "Restriction on ball and roller bearings." (not substantiated)

⁵⁶ We were prepared to make an unqualified recommendation until we learned that PMA-273 has located a domestic source for the T-34 bearing. We made no attempt to determine whether those domestic bearings may have been available to purchase in July 2011 or April 2012.

⁵⁷ DLA routinely publishes "sources sought notices" in FEDBIZOPS and issues solicitations on the DLA Internet Bid Board System to identify domestic bearing sources. It waits for the results of those efforts before it will request a waiver for a bearing. We recommend DON make similar efforts before requesting any SECNAV waiver for bearings.

What the Complainants Contend

281. Complainants contend that on 17 May 2012, despite Complainant's repeated protests, QAS-1, FRCSW, stamped and certified product work order paperwork authorizing the FRCSW to use ball bearings purchased from a Japanese source, in violation of both the Buy American Act and the DFARS.

Findings

282. Most of the findings of fact pertinent to this allegation appear in the findings for allegation three that describe the events that occurred in May 2012 leading up to QAS-1's 17 May 2012 decision to sign off on the paperwork necessary to permit FRCSW Artisans to use the Japanese-made bearings in the overhaul of T-34 actuators then awaiting overhaul.

283. The QAS employees at FRCSW work in different "shops" that are located in several buildings situated throughout the FRCSW complex. The employees of these shops perform different work functions. For example, FRCSW Artisans perform T-34/T-44 landing gear assembly repair and overhaul work in Building 472. Complainant performs most of his QAS functions in Building 472, so he is very familiar with work performed on landing gear assemblies and actuators.

284. FRCSW hired QAS-1 as a GS-9 QAS in January 2012, a few months before the T-34 bearings purchased under the April 2012 contract arrived at DLA/FRSC. Between his time in the Navy and his work for Boeing, QAS-1 had over 25 years of QA experience before joining FRCSW. QAS-1 works at FRCSW's Building 250, which is part of the component manufacturing side of FRCSW business operations. Component manufacturing work is associated with aircraft wings and other flight surfaces. QAS-1 is also qualified to perform QAS functions in the pneudraulics/hydraulics shop. He does not ordinarily perform QAS functions on Building 472 landing gear assembly work.

285. In 2012, QAS-1 and Complainant both reported to QAS-Super, who was their direct supervisor. Complainant and QAS-1 thus were co-workers in the sense that they both performed QAS functions, but neither supervised the other and they worked in different buildings performing QAS functions for different types of work.

286. In his 17 December 2012 interview, QAS-1 said that QAS-Super and Complainant had developed an aggressive, anti-management and hostile attitude about bearing purchases. He

believed that ensuring the bearings were purchased properly become a personal issue for them. QAS-1 said that Complainant engaged in name-calling, yelling, and unprofessional behavior which tainted him as a worker. QAS-1 told the investigators "I tried to stay out of it, to be honest with you" and attempted to remain objective about the matter.

287. QAS-1 said he knew very little about the bearing issue before QAD-3 asked him on 17 May 2012 to sign the paperwork approving their use. He said the first time he really became aware of the issue was when Complainant came into the office one day and "pretty much tried to tear his desk apart and threw some phones and stormed out."

288. During his interview, QAS-1 told the investigators that QA management never told him that he was Complainant's back-up QAS for the "bearings program" or, more specifically, the T-34/T-44 landing gear overhaul program. QAS-1 said Complainant had never trained him, or even had a conversation with him, about the use of foreign-made bearings before his 17 May 2012 meeting with QAD-3. QAS-1 characterized his knowledge about the bearings before the 17th as secondhand and rumors-based.

Discussion and Analysis

289. We included this allegation in our report because the OSC tasking letter specifically identified QAS-1 as someone who may have signed paperwork that allowed FRCSW Artisans to install foreign-made bearings knowing that Complainant thought their purchase violated the DoD Appropriations Act and implementing DFARS provisions. We assumed that we would develop evidence establishing that Complainant had tried to explain his position to QAS-1 at some time before 17 May 2012, when QAS-1 signed the paperwork. We did not develop such evidence.

290. In our discussion of Allegation Three, we observed that ordinarily we would not have expected FRCSW personnel to obtain as much information about the legality of a bearing purchase as they did in this case. Our conclusion that the FRCSW leadership failed to use due diligence and consequently mismanaged the issue turns on the information they obtained from senior OSD personnel, QAS-Super, and Complainant, which they chose to ignore for reasons we deem insufficient to establish they exercised due care. The facts described in Allegation Three and this allegation demonstrate that QAS-1 was not privy to any of that information. On the contrary, the evidence establishes that QAD-3 presented QAS-1 only one side of the controversy. We commend QAS-1 for his decision to review that information and

make the additional effort of contacting FLC Atty, who informed him that the purchase of the bearings was proper.

291. Consequently, we conclude QAS-1 acted reasonably and prudently in deciding to sign the paperwork. He did not sign it knowing that there was a disagreement within FRCSW as to whether the foreign-made bearing purchase violated the DoD Appropriations Act and implementing DFARS provisions.

Conclusion

292. The allegation that on 17 May 2012, FRCSW Quality Assurance Specialist QAS-1 stamped and certified documents the FRCSW QA Leadership considered necessary to authorize Artisans to use bearings manufactured in Japan for the overhaul of T-34 actuators even though he knew that the bearings purchase violated DFARS 225-7009, "Restriction on ball and roller bearings" is not substantiated.

Recommended Actions

293. We recommend that FRCSW provide QAS-1 a copy of this report and take reasonable steps to ensure he understands why the fact that the BAA permitted the purchase of foreign-made bearings in small quantities was not sufficient under these circumstances.

294. We recommend that, after determining what role the QAS should play in ensuring compliance with contracting requirements, FRCSW brief QAS-1 and all other QA personnel to ensure they understand whether their responsibilities extend beyond technical or engineering "suitability." The briefing should include matters such as determining whether waivers such as those discussed in this case are required and obtained. Provide appropriate training.

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Appendix A - Witness List

All interviews conducted in person unless otherwise noted.

1. FLC Atty, (witness) GS-15, FLC SD
2. QAD-1, (witness) Quality Assurance Division Head, GS-13, FRCSW
3. QAS-1, (subject) Quality Assurance Specialist, GS-9, FRCSW
4. QAS-Super, (witness) Quality Assurance manager for Code 54300, GS-12, FRCSW
5. Braeunig, Martin, (Complainant) Quality Assurance Specialist, GS-9, FRCSW
6. QAD-2, (witness) Director of Quality Assurance, GS-14, FRCSW (now retired)
7. FRCSW, (witness), GS-15, FRCSW
8. FLC ContOff, (subject) Contracting Officer, GS-13, FLC SD
9. DLAA-1, (witness) Deputy Commander of DLA Aviation at San Diego, CDR, DLA Aviation
10. FLAA-2, (witness) Commanding Officer of DLA Aviation at San Diego, CDR, DLA Aviation
11. FRCSW P-1, (witness) Product Support Director, GS-15, FRCSW
12. Juarez, Victor, (witness and second Complainant) Quality Assurance Specialist, FRCSW, President of the National Association of Government Inspectors, Unit 8
13. (not mentioned in report), (witness) Deputy Director of Business Operations, GS-13, FRCSW
14. LMS-1, (witness) Logistics Management Specialist, GS-12, FRCSW
15. (not mentioned in report), (witness) Logistics Management Specialist, GS-14, NAVAIR PMA-273,
16. (not mentioned in report), (witness) Executive Officer, CAPT, FRCSW
17. FRCSW-1, (witness) Commanding Officer, CAPT, FRCSW

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18. QAD-3,(witness), Quality Assurance Officer, CDR, FRCSW
 19. SME-3, (Subject Matter Expert) Materials Engineer, NAVAIR
- 4.3.5.4

Appendix B - Documents Reviewed

1. Agency File, Docket # SF-1221-13-0161-W-1, Complainant v. Department of the Navy
2. Amendment of Solicitation/Modification of Contract, Standard Form 30 (REV 10-83), dated 16 NOV 2012, 7 pages
3. AOPA report, reference number 84-0939, one page
4. Authorized Release Certificate, FAA Form 8130-3, Airworthiness Approval Tag, number 05082012, Seginus Inc, dated 08 MAY 2012
5. Bearing Inspection Report, P/N 5201KD lot #27977, sample of 7, dated 8 MAY 2012
6. Bearing Inspection Report, part number 5201KD, lot number R29877, dated 08 MAY 2012
7. Chemical Test Report from Applied Technical Services, Incorporated (ATS) dated 23 JAN 2013, 3 pages
8. Diagram, Bearing Terminology, 1 page
9. DOD EMALL NSN/NIIN Inquiry Results, one page, dated 06 NOV 2012
10. E-mail dated 13 FEB 2013 to DLAA-2 from NAVAIR IG, Subj: NAVAIR VISIT
11. E-mail dated 20 FEB 2013 to NAVAIR IG from DLAA-2, Subj: NAVAIR VISIT...follow up items
12. E-mail dated 21 FEB 2013 to NAVAIR IG from DLAA-2, Subj: Modification of Contract Number N00244-11-P-1303
13. E-mail dated 27 FEB 2013 to DLAA-2 from NAVAIR IG, Subj: BEARINGS
14. E-mail dated 04 MAR 2013 to NAVAIR IG from DLAA-2, Subj: BEARINGS...first report
15. E-mail dated 13 MAR 2012 to SME-2 from FLC Atty, Subj: Ball Bearings
16. E-mail dated 13 MAR 2012 to FLC Atty from SME-2, Subj: RE Ball Bearings

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17. E-mail dated 13 MAR 2012 to FRCSW-1 from DLA MMSC, Subj: FW: Ball Bearings
18. E-mail dated 14 MAR 2012 to SME-2 from FRCSW-1, Subj: RE: Ball Bearings
19. E-mail dated 14 MAR 2012 to FLC Atty from DLAA-1, Subj: RE: (blank)
20. E-mail dated 14 MAR 2012 to FLC Atty from DLA MMSC, Subj: (blank)
21. E-mail dated 14 MAR 2012 to DLA MMSC from FLC Atty, SUBJ: RE: (blank)
22. E-mail dated 14 MAR 2012 to FLC Atty from DLA MMSC, Subj: (none)
23. E-mail dated 14 MAR 2012 to DLA MMSC from FLC Atty, Subj: RE:
24. E-mail dated 14 MAR 2012 to FLC Atty from DLAA-1, Subj: RE:
25. E-mail dated 14 MAR 2012 to FLC Atty from DLAA-1, Subj: RE: Bearing Waiver
26. E-mail dated 15 MAR 2012 to A DLAA NI employee, Subj: Quotation - 223021
27. E-mail dated 15 MAR 2012 to DLAA-1 from FLC Atty, Subj: RE: (blank)
28. E-mail dated 15 MAR 2012 to DLAA-1 from FLC Atty, Subj: RE:
29. E-mail dated 15 MAR 2012 to DLAA-1 from FLC Atty, Subj: RE: Bearing Waiver
30. E-mail dated 16 MAR 2012, Subj: FW: T-34 Actuator, PN 5201KD, Bearing Issue, Action Items
31. E-mail dated 16 MAR 2012, Subj: FW: T-34 Actuator, PN 5201KD, BEARING ISSUE, ACTION ITEMS
32. E-mail dated 16 MAR 2012 to A DLAA NI employee, Subj: RE: 5201kd-info
33. E-mail dated 16 MAR 2012 to A DLAA NI employee, Subj: RE: 5201kd-info

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34. E-mail dated 16 MAR 2012 to A DLAA NI employee, Subj: RFQ: 5201kd-info
35. E-mail dated 16 MAR 2012 from A DLAA NI employee, Subj: RE: 5201kd-info
36. E-mail dated 19 MAR 2012 to SME-2 from FRCSW-1, Subj: RE: Ball Bearings
37. E-mail dated 20 MAR 2012 to FLC Atty from DLAA-1, Subj: RE: Bearing Waiver
38. E-mail dated 20 MAR 2012 from LMS-1, Subj: RE: T-34 Actuator, PN 5201KD, Bearing Issue, Action Items
39. E-mail dated 20 MAR 2012 from LMS-1, Subj: RE: T-34 Actuator, PN 5201KD, BEARING ISSUE, ACTION ITEMS
40. E-mail dated 20 MAR 2012 to SME-3 from SME-2, Subj: FW: Ball Bearings
41. E-mail dated 20 MAR 2012 to LMS-1, Subj: RE: T-34 Actuator, PN 5201KD, Bearing Issue, Action Items
42. E-mail dated 20 MAR 2012 to LMS-1, Subj: RE: T-34 Actuator, PN 5201KD, BEARING ISSUE, ACTION ITEMS
43. E-mail dated 20 MAR 2012, Subj: RE: T-34 Actuator, PN 5201KD, BEARING ISSUE, ACTION ITEMS
44. E-mail dated 20 MAR, Subj: RE: T-34 Actuator, PN 5201KD, Bearing Issue, Action Items
45. E-mail dated 21 MAR 2012 to an FRCSW employee, Subj: FW: T-34 Actuator, PN 5201KD, Bearing Issue, Action Items
46. E-mail dated 21 MAR 2012 to an FRCSW employee from QAD-3, Subj: RE: T-34 Actuator, PN 5201KD, Bearing Issue, Action Items
47. E-mail dated 21 MAR 2012 to an FRCSW employee from QAD-3, Subj: RE: T-34 Actuator, PN 5201KD, BEARING ISSUE, ACTION ITEMS
48. E-mail dated 21 MAR 2012 to LMS-1, Subj: RE: T-34 Actuator, PN 5201KD, Bearing Issue, Action Items
49. E-mail dated 21 MAR 2012 to LMS-1, Subj: RE: T-34 Actuator, PN 5201KD, BEARING ISSUE, ACTION ITEMS

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50. E-mail dated 21 MAR 2012 from An FRCSW employee, Subj: FW: T-34 Actuator, PN 5201KD, Bearing Issue, Action Items
51. E-mail dated 21 MAR 2012 from An FRCSW employee, Subj: RE: T-34 Actuator, PN 5201KD, BEARING ISSUE, ACTION ITEMS
52. E-mail dated 26 MAR 2012 to FLC Atty from DLAA-1, Subj: RE: Bearing Waiver
53. E-mail dated 26 MAR 2012 to DLAA-1 from FLC Atty, Subj: RE: Bearing Waiver
54. E-mail dated 26 MAR 2012 to DLAA-1 from FLC Atty, Subj: RE: Bearing Waiver
55. E-mail dated 26 MAR 2012 to FRCSW-1 from SME-3, Subj: RE: Ball Bearings
56. E-mail dated 26 MAR 2012 to FLC Atty from DLAA-1, Subj: RE: Bearing Waiver
57. E-mail dated 27 MAR 2012 to A DLAA NI employee, Subj: Quotation - 223021
58. E-mail dated 27 MAR 2012 to A DLAA NI employee, Subj: Quotation - 223021
59. E-mail dated 27 MAR 2012 to A DLAA NI employee, Subj: Quotation - 223021
60. E-mail dated 27 MAR 2012 to A DLAA NI employee, Subj: Bearings
61. E-mail dated 27 MAR 2012 from A DLAA NI employee, Subj: Quotation - 223021
62. E-mail dated 27 MAR 2012 from A DLAA NI employee, Subj: Quotation - 223021
63. E-mail dated 27 MAR 2012 from A DLAA NI employee, Subj: Quotation - 223021
64. E-mail dated 27 MAR 2012 to FLC ContOff from DLAA-1, Subj: RE: Please advise on Bearings P/N 5201KD (PO#N002442080AN90) urgency of need and contract requirement.
65. E-mail dated 28 MAR 2012 to QAD-3 from LMS-1, Subj: (no subject listed)

Suitable for Public Release (names removed)

66. E-mail dated 28 MAR 2012 to QAD-3 from LMS-1, Subj: RE: RE:
RE: T-34 Actuator, PN 5201KD, BEARING ISSUE, ACTION ITEMS
67. E-mail dated 28 MAR 2012 to QAD-3 from LMS-1, Subj: RE: RE:
RE: T-34 Actuator, PN 5201KD, BEARING ISSUE, ACTION ITEMS
68. E-mail dated 28 MAR 2012 to LMS-1 from QAD-3, Subj: (no
subject listed)
69. E-mail dated 28 MAR 2012 to LMS-1 from QAD-3, Subj: RE: RE:
RE: T-34 Actuator, PN 5201KD, BEARING ISSUE, ACTION ITEMS
70. E-mail dated 28 MAR 2012 to LMS-1 from QAD-3, Subj: RE: RE:
RE: T-34 Actuator, PN 5201KD, Bearing Issue, ACTION ITEMS
71. E-mail dated 29 MAR 2012 to QAD-3 from LMS-1, Subj: RE: RE:
RE: T-34 Actuator, PN 5201KD, Bearing Issue, ACTION ITEMS
72. E-mail dated 29 MAR 2012 to FRCSW P-1 from LMS-1, Subj: RE:
RE: RE: T-34 Actuator, PN 5201KD, Bearing Issue, ACTION ITEMS
73. E-mail dated 29 MAR 2012 to LMS-1 from FRCSW P-1, Subj: RE:
RE: RE: T-34 Actuator, PN 5201KD, Bearing Issue, ACTION ITEMS
74. E-mail dated 29 MAR 2012 to DLAA-1 from LMS-1, Subj: RE:
RE: RE: T-34 Actuator, PN 5201KD, Bearing Issue, ACTION ITEMS
75. E-mail dated 29 MAR 2012 to LMS-1 from DLAA-1, Subj: RE:
RE: RE: T-34 Actuator, PN 5201KD, Bearing Issue, ACTION ITEMS
76. E-mail dated 29 MAR 2012 to DLAA-1 from LMS-1, Subj: RE:
RE: RE: T-34 Actuator, PN 5201KD, Bearing Issue, Action Items
77. E-mail dated 29 MAR 2012 to FRCSW P-1 from LMS-1, Subj: RE:
RE: RE: T-34 Actuator, PN 5201KD, Bearing Issue, Action Items
78. E-mail dated 29 MAR 2012 to FRCSW P-1 from LMS-1, Subj: RE:
RE: RE: T-34 Actuator, PN 5201KD, BEARING ISSUE, ACTION ITEMS
79. E-mail dated 29 MAR 2012 to LMS-1 from FRCSW P-1, Subj: RE:
RE: RE: T-34 Actuator, PN 5201KD, BEARING ISSUE, ACTION ITEMS
80. E-mail dated 29 MAR 2012 to DLAA-1 from LMS-1, Subj: RE:
RE: RE: T-34 Actuator, PN 5201KD, BEARING ISSUE, ACTION ITEMS
81. E-mail dated 29 MAR 2012 to LMS-1 from DLAA-1, Subj: RE:
RE: RE: T-34 Actuator, PN 5201KD, BEARING ISSUE, ACTION ITEMS

Suitable for Public Release (names removed)

82. E-mail dated 29 MAR 2012 to QAD-3 from LMS-1, Subj: (no subject listed)
83. E-mail dated 29 MAR 2012 to LMS-1 from DLAA-1, Subj: RE: RE: T-34 Actuator, PN 5201KD, Bearing Issue, Action Items
84. E-mail dated 29 MAR 2012 to LMS-1 from FRCSW P-1, Subj: RE: RE: T-34 Actuator, PN 5201KD, Bearing Issue, Action Items
85. E-mail dated 30 MAR 2012 to DLAA-1 from LMS-1, Subj: RE: RE: T-34 Actuator, PN 5201KD, Bearing Issue, Action Items
86. E-mail dated 30 MAR 2012 to QAD-3 from LMS-1, Subj: RE: RE: RE: T-34 Actuator, PN 5201KD, Bearing Issue, Action Items
87. E-mail dated 30 MAR 2012 to LMS-1 from QAD-3, Subj: RE: RE: RE: T-34 Actuator, PN 5201KD, Bearing Issue, Action Items
88. E-mail dated 30 MAR 2012 to DLAA-1 from LMS-1, Subj: RE: RE: RE: T-34 Actuator, PN 5201KD, Bearing Issue, ACTION ITEMS
89. E-mail dated 30 MAR 2012 to LMS-1 from QAD-3, Subj: RE: RE: RE: T-34 Actuator, PN 5201KD, Bearing Issue, ACTION ITEMS
90. E-mail dated 30 MAR 2012 to QAD-3 from LMS-1, Subj: RE: RE: RE: T-34 Actuator, PN 5201KD, Bearing Issue, ACTION ITEMS
91. E-mail dated 30 MAR 2012 to LMS-1 from QAD-3, Subj: RE: RE: RE: T-34 Actuator, PN 5201KD, BEARING ISSUE, ACTION ITEMS
92. E-mail dated 30 MAR 2012 to QAD-3 from LMS-1, Subj: RE: RE: RE: T-34 Actuator, PN 5201KD, BEARING ISSUE, ACTION ITEMS
93. E-mail dated 10 APR 2012 to QAD-3 from LMS-1, Subj: RE: T-34 Actuator, PN 5201KD, Bearing Issue, Action Items
94. E-mail dated 10 APR 2012 to LMS-1 from QAD-3, Subj: RE: T-34 Actuator, PN 5201KD, Bearing Issue, Action Items
95. E-mail dated 10 APR 2012 to QAD-3 from LMS-1, Subj: RE: T-34 Actuator, PN 5201KD, Bearing Issue, ACTION ITEMS
96. E-mail dated 10 APR 2012 to LMS-1 from QAD-3, Subj: RE: RE: RE: T-34 Actuator, PN 5201KD, Bearing Issue, ACTION ITEMS
97. E-mail dated 10 APR 2012 to LMS-1 from QAD-3, Subj: RE: RE: RE: T-34 Actuator, PN 5201KD, BEARING ISSUE, ACTION ITEMS

Suitable for Public Release (names removed)

98. E-mail dated 10 APR 2012 to QAD-3 from LMS-1, Subj: RE: RE: RE: T-34 Actuator, PN 5201KD, BEARING ISSUE, ACTION ITEMS
99. E-mail dated 11 APR 2012 to QAD-3 from LMS-1, Subj: RE: T-34 Actuator, PN 5201KD, Bearing Issue, ACTION ITEMS
100. E-mail dated 11 APR 2012 to LMS-1 from DLAA-1, Subj: RE: T-34 Actuator, PN 5201KD, Bearing Issue, ACTION ITEMS
101. E-mail dated 11 APR 2012 to (DLAA-1), LMS-1 from DLAA-1, Subj: RE: T-34 Actuator / Japan Bearing PN 5201KD / Update Request
102. E-mail dated 11 APR 2012 to (DLAA-1), LMS-1 from DLAA-1, Subj: RE: T-34 Actuator, PN 5201KD, BEARING ISSUE, ACTION ITEMS
103. E-mail dated 11 APR 2012 to DLAA-1 from LMS-1, Subj: RE: T-34 Actuator, PN 5201KD, Bearing Issue, Action Items
104. E-mail dated 11 APR 2012 to QAD-3 from LMS-1, Subj: RE: T-34 Actuator, PN 5201KD, Bearing Issue, Action Items
105. E-mail dated 11 APR 2012 to LMS-1 from DLAA-1, Subj: RE: T-34 Actuator, PN 5201KD, Bearing Issue, Action Items
106. E-mail dated 11 APR 2012 to LMS-1 from DLAA-1, Subj: RE: T-34 Actuator, PN 5201KD, BEARING ISSUE, ACTION ITEMS
107. E-mail dated 11 APR 2012 to QAD-3 from LMS-1, Subj: RE: RE: RE: T-34 Actuator, PN 5201KD, BEARING ISSUE, ACTION ITEMS
108. E-mail dated 13 APR 2012 to QAD-3 from LMS-1, Subj: RE: T-34 Actuator / Japan Bearing PN 5201KD / Update Request
109. E-mail dated 13 APR 2012 to LMS-1 from QAD-3, Subj: RE: T-34 Actuator / Japan Bearing PN 5201KD / Update Request
110. E-mail dated 13 APR 2012 to QAD-3 from LMS-1, Subj: RE: T-34 Actuator / Japan Bearing PN 5201KD / Update Request
111. E-mail dated 13 APR 2012 to LMS-1 from QAD-3, Subj: RE: T-34 Actuator / Japan Bearing PN 5201KD / Update Request
112. E-mail dated 13 APR 2012 to QAD-3 from LMS-1, Subj: RE: T-34 Actuator / Japan Bearing PN: 5201KD / Update Request
113. E-mail dated 13 APR 2012 to LMS-1 from QAD-3, Subj: RE: T-34 Actuator / Japan Bearing PN: 5201KD / Update Request

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114. E-mail dated 16 APR 2012 from LMS-1, Subj: RE: T-34 Actuator / Japan Bearing PN 5201KD / Update
115. E-mail dated 16 APR 2012 to FRCSW ML-1 from Complainant, Subj: RE: T-34 Actuator / Japan Bearing PN 5201KD / Update Request
116. E-mail dated 16 APR 2012 to QAD-3 from LMS-1, Subj: RE: T-34 Actuator / Japan Bearing PN 5201KD / Update Request
117. E-mail dated 17 APR 2012 to FRCSW ML-1, Subj: RE: T-34 Actuator / Japan Bearing PN 5201KD / Update Request
118. E-mail dated 17 APR 2012 from FRCSW ML-1, Subj: RE: T-34 Actuator / Japan Bearing PN 5201KD / Update Request
119. E-mail dated 19 APR 2012 to A DLAA NI employee, Subj: Bearings P/N 50-380043, NIIN 009325192 (T44)
120. E-mail dated 19 APR 2012 from FRCSW ML-1, Subj: RE: T-34 Actuator / Japan Bearing PN 5201KD / Update Request
121. E-mail dated 19 APR 2012 from A DLAA NI employee, Subj: Bearings P/N 50-380043, NIIN 009325192 (T44)
122. E-mail dated 16 APR 2012 to QAD-3 from LMS-1, Subj: RE: T-34 Actuator / Japan Bearing PN 5201KD / Update Request
123. E-mail dated 16 APR 2012 from LMS-1, Subj: RE: T-34 Actuator / Japan Bearing PN: 5201KD / Update
124. E-mail dated 16 APR 2012 to Complainant from LMS-1, Subj: RE: T-34 Actuator / Japan Bearing PN: 5201KD / Update
125. E-mail dated 18 APR 2012 to QAS-Super from LMS-1, Subj: RE: T-34 Actuator / Japan Bearing PN: 5201KD
126. E-mail dated 20 APR 2012 to LMS-1 from QAS-Super, Subj: RE: T-34 Actuator / Japan Bearing PN: 5201KD
127. E-mail dated 23 APR 2012 to QAS-Super from LMS-1, Subj: RE: T-34 Actuator / Japan Bearing PN: 5201KD
128. E-mail dated 23 APR 2012 to LMS-1 from QAD-3, Subj: RE: T-34 Actuator / Japan Bearing PN: 5201KD
129. E-mail dated 23 APR 2012 from LMS-1, Subj: RE: T-34 Actuator / Japan Bearing PN: 5201KD

Suitable for Public Release (names removed)

130. E-mail dated 24 APR 2012 to Complainant from LMS-1, Subj: RE: T-34 Actuator / Japan Bearing PN: 5201KD

131. E-mail dated 25 APR 2012 to QAS-Super from LMS-1, Subj: RE: T-34 Actuator / Japan Bearing PN: 5201KD

132. E-mail dated 25 APR 2012 to QAS-Super from LMS-1, Subj: RE: T-34 Actuator / Japan Bearing PN: 5201KD

133. E-mail dated 26 APR 2012 to QAD-3 from LMS-1, Subj: RE: T-34 Actuator / Japan Bearing PN: 5201KD

134. E-mail dated 16 APR 2012 to QAD-3 from LMS-1, Subj: RE: T-34 Actuator / Japan Bearing PN: 5201KD / Update

135. E-mail dated 16 APR 2012 from LMS-1, Subj: RE: T-34 Actuator / Japan Bearing PN: 5201KD / Update

136. E-mail dated 16 APR 2012 to Complainant from LMS-1, Subj: RE: T-34 Actuator / Japan Bearing PN: 5201KD / Update Request

137. E-mail dated 16 APR 2012 from LMS-1, Subj: RE: T-34 Actuator / Japan Bearing PN: 5201KD

138. E-mail dated 16 APR 2012 to Complainant from LMS-1, Subj: RE: T-34 Actuator / Japan Bearing PN: 5201KD

139. E-mail dated 18 APR 2012 to QAS-Super from LMS-1, Subj: RE: T-34 Actuator / Japan Bearing PN: 5201KD

140. E-mail dated 20 APR 2012 to LMS-1 from QAS-Super, Subj: RE: T-34 Actuator / Japan Bearing PN: 5201KD

141. E-mail dated 23 APR 2012 to QAS-Super from LMS-1, Subj: RE: T-34 Actuator / Japan Bearing PN: 5201KD

142. E-mail dated 23 APR 2012 to LMS-1 from QAD-3, Subj: RE: T-34 Actuator / Japan Bearing PN: 5201KD

143. E-mail dated 25 APR 2012 to QAS-Super from LMS-1, Subj: RE: T-34 Actuator / Japan Bearing PN: 5201KD

144. E-mail dated 25 APR 2012 to LMS-1 from QAS-Super, Subj: RE: T-34 Actuator / Japan Bearing PN: 5201KD

145. E-mail dated 25 APR 2012 to LMS-1 from QAS-Super, Subj: RE: T-34 Actuator / Japan Bearing PN: 5201KD

Suitable for Public Release (names removed)

146. E-mail dated 26 APR 2012 to QAD-3 from LMS-1, Subj: RE: T-34 Actuator / Japan Bearing PN: 5201KD
147. E-mail dated 30 APR 2012 to FRCSW P-1 from QAD-3, Subj: RE: T-34 Actuator / Japan Bearing PN: 5201KD
148. E-mail dated 10 MAY 2012 to LMS-1, Subj: New REI # 2012-0685
149. E-mail dated 10 MAY 2012 to FRCSW ML-1 from LMS-1, Subj: T-34 Actuator, PN 5201KD, BEARING ISSUE, ACTION ITEMS
150. E-mail dated 14 MAY 2012 to QAD-3 from LMS-1, Subj: RE: RE: T-34 Actuator / Japan Bearing PN: 5201KD
151. E-mail dated 14 MAY 2012 to QAD-2 from QAS-Super, Subj: BEARING ISSUE
152. E-mail dated 14 MAY 2012 to QAD-3 from QAD-1, Subj: BEARING ISSUE
153. E-mail dated 14 MAY 2012 to DLAA-1 from QAD-3, Subj: BEARING ISSUE
154. E-mail dated 14 MAY 2012 to QAD-3 from FRCSW P-1, Subj: BEARING ISSUE
155. E-mail dated 14 MAY 2012 to QAS-Super from QAD-3, Subj: BEARING ISSUE
156. E-mail dated 14 MAY 2012 to QAD-3 from QAS-Super, Subj: BEARING ISSUE
157. E-mail dated 15 MAY 2012 to QAD-3 from LMS-1, Subj: RE: RE: T-34 Actuator / Japan Bearing PN: 5201KD
158. E-mail dated 15 MAY 2012 to LMS-1 from QAD-3, Subj: RE: RE: T-34 Actuator / Japan Bearing PN: 5201KD
159. E-mail dated 16 MAY 2012 to FLC ContOff from DLAA-1, Subj: Bearing Waiver
160. E-mail dated 18 JUL 2012 from LMS-1, Subj: RE: Modified Bearings Procedure for Receiving - Issuing and Inspection of T34 /T44 bearings
161. E-mail dated 18 JUL 2012, Subj: Modified Bearings Procedure for Receiving - Issuing and Inspection of T34 /T44 bearings

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162. E-mail dated 08 AUG 2012 to SME-2 from Complainant, Subj:
RE: Ball Bearings / Update
163. E-mail dated 08 AUG 2012 to Complainant from SME-2, Subj:
RE: Ball Bearings / Update
164. E-mail dated 08 AUG 2012 to SME-2 from Complainant, Subj:
RE: Ball Bearings / Update
165. E-mail dated 08 AUG 2012 to Complainant from SME-2, Subj:
RE: Ball Bearings / Update
166. E-mail dated 20 AUG 2012 to FLC Atty from Complainant,
Subj: FW: Ball Bearings / Update
167. E-mail dated 20 AUG 2012 to FLC Atty from Complainant,
Subj: RE: Ball Bearings / Update
168. E-mail dated 20 AUG 2012 to Complainant from FLC Atty,
Subj: RE: Ball Bearings / Update
169. E-mail dated 20 AUG 2012 to FLC Atty from Complainant,
Subj: RE: Ball Bearings / Update
170. E-mail dated 20 AUG 2012 to Complainant from FLC Atty,
Subj: RE: Ball Bearings / Update
171. E-mail dated 20 AUG 2012 to FLC Atty from Complainant,
Subj: RE: Ball Bearings / Update
172. E-mail dated 03 SEP 2012 from Complainant, Subj: Foreign
Bearings
173. E-mail dated 13 NOV 2012 from FLC ContOff, Subj: PO:
N00244-11-P-1303 - RCP: N00244-1179-AN13
174. E-mail dated 15 NOV 2012 to FLC ContOff, Subj: RE: PO:
N00244-11-P-1303 - RCP: N00244-1179-AN13
175. E-mail dated 27 NOV 2012 from FLC Atty, Subj: Possible
Anti-Deficiency Act Violation
176. E-mail dated 28 NOV 2012, Subj: RE: Possible Anti-
Deficiency Act Violation/Hotline 2012203885
177. Excerpt from Beechcraft T-34 Maintenance Manual, 4 pages

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178. FAA report, SDR reporting at <http://av-info.faa.gov/SDRX/ReportViewer.aspx?ocn=2004FA0000117>, 3 pages
179. FRCSW Instruction 4855.1, dated 10 JAN 2010
180. FRCSW Instruction 4855.1A dated xxxxxxxx
181. Invoice, Seginus parts company, dated 08 MAY 2012
182. Letter from complainant to OSC, no date given
183. Letter from OSC to Complainant, dated 21 SEP 2012
184. Logbook Entry, FRCSW Materials Lab Bearings Log, 2 pages
185. Memorandum from Joint Depot Maintenance Activities Group, dated 13 JAN 2011
186. Memorandum from Joint Depot Maintenance Activities Group, dated 21 JAN 2011
187. Memorandum dated 12 February 2013 to NAVAIR IG, Office of the Inspector General, Subject: NAVAIR IG Bearings Case - Roller Bearings question - T34/T44 landing gear bearings
188. Office of Special Counsel Tasking Letter, dated 13 NOV 2012
189. Part or Material Certification Form, ATA Specification 106, Seginus parts company, dated 08 MAY 2012
190. Photograph of 2 ball bearings for size comparison with P/N EH50-380043 with ruler
191. Photograph of 2 ball bearings P/N 50-380044 with tape measure
192. Photograph, data file name DSC 0232
193. Photograph, data file name DSC 0232
194. Photograph, data file name DSC 0234
195. Power Point Presentation, T-34/T-44 PMR, JAN 16-17 2013, 21 slides
196. Power Point Presentation, T-34/T-44 Snapshot as of SEP 14, 2012, 8 slides

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197. Quality Verification Inspection of Ball and Roller Bearings document, 25 Bearings, Timken Japan Bearing 5201KD
198. Quotation, AOG Aviation Spares, No. 104910, dated 07 MAY 2012
199. Quotation, Global Parts.aero, No. 223021, dated 15 MAR 2012
200. Reference, Standard Specification for Steel Bars, Carbon and Alloy, Hot-Wrought, General Requirements for:, 8 pages
201. REI - TEI Detail sheet, pulled from <https://cmpro.navair.navy.mil/frcsw/reiteiwkfl.cfm?id=222E241B5468670A7C00417B79...> Dated 27 NOV 2012
202. REI-TEI PWD, REI-COMP 2012-0685-01, dated 17 MAY 2012, one page
203. REI-TEI sheet, REI-TEI Number REI-COMP-2012-0685, 4 pages
204. REI-TEI, REI-COMP-2012-0597, approval date 25 APR 2012
205. Request for Contractual Procurement - NAVCOMPT Form 2275 (REV 8.81) S/N 0104-LF-702-2761, Document Number N-00244-2080, dated 20 MAR 2012
206. Request for Contractual Procurement - NAVCOMPT Form 2275 (REV 8.81) S/N 0104-LF-702-2761, Document Number N-002441179AN13, dated 29 JUL 2011
207. Request for Stock Buy, Stock number 3110-009325192, dated 03 OCT 2012
208. Request for Stock Buy, Stock number 3110-009325192, dated 07 MAY 2012
209. Solicitation/Contract/Order for Commercial Items, Standard Form 1449 (REV 3/2005), dated 28 SEP 2012, 69 pages
210. Solicitation/Contract/Order for Commercial Items, Standard Form 1449 (REV 3/2005), dated 06 APR 2012, 16 pages
211. Solicitation/Contract/Order for Commercial Items, Standard Form 1449 (REV 3/2005), dated 29 JUL 2011, 14 pages
212. Spreadsheet depicting T-33/T-44 landing gear components with associated nomenclature, part number, NIIN, etc.

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213. The Buy American Act: Requiring Government Procurements to Come from Domestic Sources, Congressional Research Service, John R. Luckey, Legislative Attorney, 13 MAR 2009

214. World Class Aviation, INC, Quotation 134324, dated 27 MAR 2012

Appendix C - Reference Diagrams and Pictures

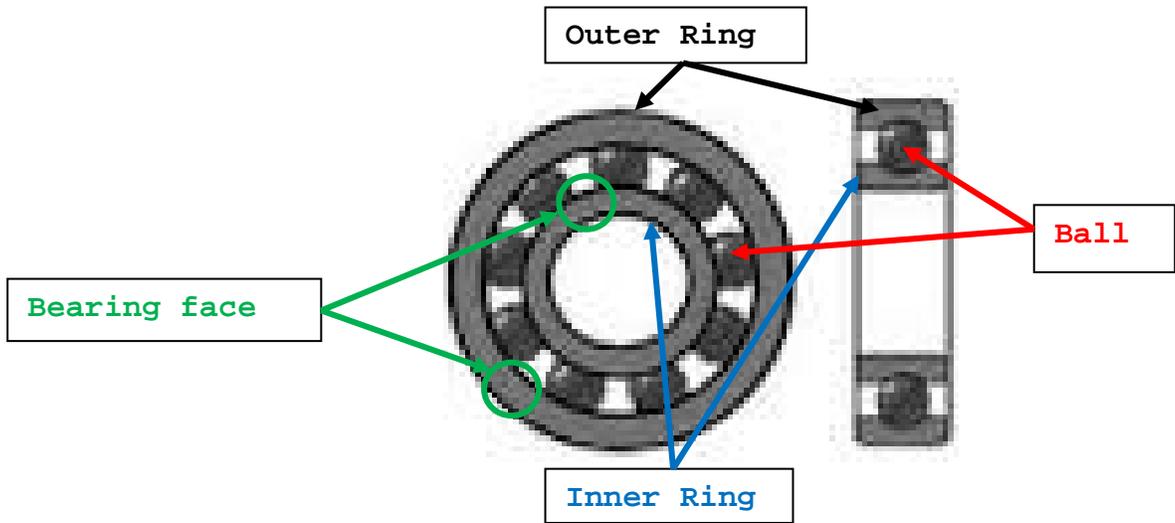
T-44C Pegasus



T-6 Texan



T-34C Turbomentor



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