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United States Government Accountability Office
Washington, DC 20548

STATEMENT REGARDING LOCKHEED MARTIN SMALL DIAMETER BOMB PROCUREMENT PROTEST

In a decision issued on February 18, 2005, the Government Accountability Office (GAO) resolved a protest filed by Lockheed Martin on November 10 and docketed as B-295402, concerning the Department of the Air Force's award of a contract to the Boeing Company for the production of the Small Diameter Bomb (SDB). The protester alleged that the decision to award to Boeing was tainted by the improper involvement and influence of Darleen Druyun, particularly in modifying the contract requirements in a way that favored Boeing. At the time, Druyun was the Air Force's Principal Deputy Assistant Secretary for Acquisition; she subsequently pled guilty in United States District Court to violating the provisions of 18 U.S.C. section 208(a) regarding conflicts of interest.

With regard to the SDB procurement, GAO sustained Lockheed Martin's protest because the record showed that Darleen Druyun was involved in the decisionmaking process that culminated in changes made to evaluation factors—including deletion of specific technical requirements. The record further showed that the Air Force currently intends to amend Boeing's contract on a sole-source basis to add those previously deleted requirements. GAO recommended that, rather than making this sole-source addition to Boeing's contract, the Air Force conduct a competition for those requirements.

GAO also recommended that Lockheed Martin be reimbursed the reasonable costs of filing and pursuing its protest, including reasonable attorneys' fees. However, GAO deferred ruling on Lockheed Martin's request for reimbursement of proposal preparation costs because review of the record raised concerns regarding the handling of post-employment restrictions with respect to a retired senior Air Force official, who is currently employed at Lockheed Martin. As discussed in GAO's decision, enforcement of the post-employment restrictions is not generally within the purview of GAO's bid protest process. Accordingly, GAO recommended that the Air Force review this matter and report back to GAO. Since the decision contains recommendations for corrective action, by law, the head of the procuring activity responsible for the solicitation must report to our Office if the agency has not fully implemented our corrective action recommendations within 60 days of receipt of our decision.

Because GAO's decision contains proprietary and source selection sensitive information, release of the decision is limited to counsel for the protester and intervenor (Boeing) admitted under the GAO protective order issued for this protest and to the Air Force. GAO has requested that the parties provide their proposed

redactions for the purpose of GAO preparing a public version of this decision. GAO expects to publish a public version of the decision by February 25.

On November 10, Lockheed Martin, L3 Communications Integrated Systems, and BAE Systems Integrated Defense Solutions, Inc. submitted protests docketed as B-295401 et al., challenging various actions regarding the Air Force procurement to upgrade the avionics of the C-130 aircraft. GAO will resolve those protests in a separate decision, which is expected to be issued within the next week.

For any further information, please contact Anthony H. Gamboa, General Counsel, GAO, at 202-512-5400.