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United States Senate

July 28, 2004

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VIA FACSIMILE AND FIRST CLASS MAIL

The Honorable Donald H. Rumsfeld
Secretary
Department of Defense
The Pentagon 3E880
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Dear Mr. Secretary:

I am concerned about how the Analysis of Alternatives (AoA) for the Tanker Lease Proposal will be conducted. In particular, I am concerned about the participation of Air Force leadership in the AoA, and the involvement of the Air Force's federally funded research and development center (FFRDC)—RAND, which I understand is spearheading this effort.

The conduct of Air Force leadership regarding the Tanker Lease Proposal has been unacceptable. Frankly, its credibility on the recapitalization of the tanker fleet has been fundamentally called into question. Notably, many of the problems that the Department of Defense Office of the Inspector General (DoD-OIG) found in the Tanker Lease Proposal are similar to those it recently found in the multibillion dollar C-130J procurement program. Bases for my concern about the participation of Air Force leadership in the AoA include, but are not limited to, the following.

First, the Air Force has provided Congress inaccurate information in an attempt to justify its original proposal to lease 100 Boeing KC-767As. For example, Air Force Secretary Jim Roche has repeatedly advised Congress that, in the existing KC-135 fleet, "corrosion is significant, pervasive, and represents an unacceptable risk." Secretary Roche has also emphasized to Congress increased operating costs in the current fleet as a basis for entering into the tanker lease. Air Force leadership has indicated that these elements create an "urgent" need to recapitalize the fleet. However, as you of course know, the DSB task force concluded that the Air Force's claims of unmanageable corrosion problems and cost growth were overstated. As such, the task force also concluded that "[t]here is no compelling material or financial reason to initiate a replacement program prior to the completion of the AoA and the MCS." Thus, the task

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force jettisoned the "dominant reason" Secretary Roche first cited in his July 10, 2003, report to Congress as the basis for having taxpayers pay billions of dollars more for leasing tankers than they would for buying them. The Air Force's representations on this issue remains a matter of continuing investigative concern.¹

In another example, to comply with the original authorizing statute, the Air Force misrepresented to Congress that its proposal to lease 100 Boeing KC-767 tankers was merely an operating lease. This would have obviated the requirement that the White House obtain advance budget authority for the whole lease proposal. But, the DoD-OIG and Program Analysis and Evaluation (PA&E), as well as the Congressional Budget Office (CBO) and the General Accounting Office (GAO) found that the procurement of these tankers is, in fact, a lease-purchase. In addition, facts surrounding the original lease proposal made it clear that the transaction was a lease-purchase: under the original proposal, the Air Force conceded that the DoD is "committed to earmark[ing] an additional \$2B in FY08 and FY09 for the purchase of aircraft covered by the multi-year program under the terms of the proposed contract" to head off a funding spike over the Future-Years Defense Program.

Second, the DoD-OIG and the NDU concluded that the Air Force's commercial item procurement strategy "prevented any visibility into Boeing's costs and required the Air Force to use a fixed-price type contract ... The strategy also exempted [Boeing] from the requirement to submit cost or pricing data. The strategy places the Department at high risk for paying excessive prices and precludes good fiduciary responsibility for DoD funds." The NDU similarly concluded that "[i]n a sole source, monopoly commercial environment, the government is not served well with limited price data" and suggested that the Air Force neglected its fiduciary/stewardship responsibilities.

Notably, the DoD-OIG arrived at similar conclusions regarding the Air Force's mismanagement of the C-130J procurement program. In particular, the DoD-OIG found that, because the C-130J was improperly acquired as a commercial item, the Air Force did not have contractor-certified information on contract prices, costs, or profits, and therefore was "limited" in its ability to protect the Government against possible overpricing.

¹My concerns about whether the stated reason for the lease was pretext is in part based on an e-mail among senior Boeing executives, dated September 18, 2001. This e-mail describes a meeting between Boeing and Assistant Secretary of the Air Force for Acquisition Marvin Sambur, during which "[Sambur] indicated that the USAF is desperately looking for the rationale for why the USAF should pursue the 767 Tanker NOW. The briefing his staff had put together on the Economic Service Life Study did not meet his needs ... Sambur is looking for the compelling reason the administration should do this now rather than push off to a future administration." E-mails of this sort underscore the Committee's need for the documents it requested from the DoD and the Air Force on July 2, and September 11, 2003.

Third, the DoD-OIG and the NDU also concluded that the operational requirements document (ORD) for tankers was not tailored, as it should have been, to the requirements of the warfighter, but rather to closely correlate to the Boeing KC-767A. The DoD-OIG found that senior Air Force staff directed that the ORD closely correlate to the Boeing KC-767A that was being developed for a foreign government, in anticipation of the authorizing legislation. This is particularly troubling where, according to an internal Boeing document regarding the ORD, Boeing planned to “[e]stablish clearly defined requirements in ORD for the USAF Tanker configuration that results in an affordable solution that meets the USAF mission needs and will prevent an AOA from being conducted.” Under the current proposal, the first 100 tankers produced will not be capable of, among other things, interoperability with Navy, Marine, or coalition assets, or simultaneously refueling more than one receiver aircraft. Rear Adm. Mark P. Fitzgerald, USN, recently suggested that in theater, such a limitation restricts the Navy’s long-range striking capability and fosters a needlessly risky aerial refueling environment.

Notably, with respect to the C-130J procurement program, the DoD-OIG similarly found that, while the Air Force conditionally paid Lockheed Martin about \$2.6 billion, the C-130J is not operationally suitable or effective and cannot perform its intended mission. Furthermore, to date, 36 deficiency reports that “could cause death, severe injury or illness, major loss of equipment or systems, or that could directly restrict combat or operational readiness” have been received.

Finally, Boeing documents suggest that the Air Force allowed Boeing to modify the requirements in the ORD while it was being developed. These documents also reflect that the Air Force induced the Joint Requirements Oversight Council (JROC) into approving and validating the corrupted ORD by falsely representing that it was not tailored to a specific aircraft. This is of continuing investigative interest to the Committee.

Interestingly, as a result of the commercial specifications of the C-130J not meeting user needs, the Air Force (and Marine Corp) decided to “revise its requirements document” to reduce the initial capabilities required and to satisfy operational requirement deficiencies through block upgrade programs at the Government expense. I am very concerned about this.

I understand that RAND (the Air Force’s FFRDC), and Project Air Force in particular, is spearheading the AoA. Generally, the Air Force, specifically Dr. Sambur, is “the overall sponsor” for Project Air Force activities. However, having argued against the need for an AoA as early as November 2002, according to a recently produced internal DoD e-mail, Dr. Sambur has apparently prejudged its outcome:

A formal AoA will cost money, delay the program two years, and still come up with the same answer we have today. There are only a few aircraft that can serve as tankers, they are already in production, and so analyzing their respective capabilities and costs won’t take long—in fact, it’s already been done and the results passed to OSD. What’s left to study?

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As I originally indicated in my letter of March 12, 2004, Air Force Vice Chief of Staff General T. Michael Moseley similarly touted the Air Force's proposal to lease and buy Boeing 767s during recent budget hearings. In particular, General Moseley provided "opinion" testimony suggesting that the KC-767 tanker is the Air Force's only viable option. For example, in testimony before the Projection Force Subcommittee of the House Armed Services Committee, General Moseley specifically rejected re-engining remaining KC-135Es (as the DSB task force recommended); modifying used aircraft (for example, DC-10s, also as the DSB task force suggested); using contractor support services (as the GAO recently opined), and other options that your office's AoA guidance specifically required the Air Force to examine. While General Moseley attempted to explain away his testimony as "personal opinion," at no time was he asked to provide his personal opinion and at no time during his testimony did General Moseley indicate that he was conveying a personal opinion. Considering General Moseley's role as the chairman of the Air Force Steering Group for Project Air Force and, respectfully, despite your assurances in your March 17, 2004, letter, I remain concerned that the Air Force and RAND have effectively prejudged the outcome of the AoA regarding the Tanker Lease Proposal.

Several recently produced internal DoD e-mails call into question whether the ongoing AoA will be conducted objectively. For example, in an e-mail, dated August 15, 2003, from Secretary Roche to Dr. Sambur and Acting Undersecretary Wynne, Secretary Roche dissuaded the OSD and Air Force staff from initiating an AoA. In this e-mail, Secretary Roche said the following:

Agggggg, stop the nonsense! Don't even begin to start an unnecessary AoA at this point. All this would do is give the enemies of the lease an excuse from DoD to delay the lease, and really honk off the Appropriators. Let's see what comes out of conference, damn it! If the lease is approved then we can talk about how to decide on the recapitalization of the other 400 airplanes, but there is no rush here.

Soon thereafter, Acting Secretary Wynne responded, "I agree with Jim, [sic] What started this flurry of activity? I'd hate for our story to change." The foregoing does not inspire confidence that the current AoA will be conducted properly.

My concern that RAND, in particular, may have prejudged the outcome of the AoA is underscored by its conclusion regarding tanker recapitalization in a recent report. In a December 2003 report entitled "Investigating Optimal Replacement of Aging Air Force Systems," RAND, in particular Project Air Force, found—without the benefit of an AoA—that "it appears to be optimal to replace the KC-135 by the end of the decade." Apparently relying on Air Force data and analysis that was ultimately rejected by the DSB task force, this conclusion comes unacceptably close to prejudging the outcome of the AoA and is inconsistent with the conclusions of the Air Force's own Economic Service Life Study; the GAO; and, most recently, the DSB task force, all of which found that the current fleet is viable through 2040. In light of the relationship between the RAND and the Air Force, as described above, there can be no assurance that RAND will conduct the AoA here with the desired independence.

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My concerns appear to be reflected in a recently released internal DoD e-mail from Eric Coulter, Deputy Director for Theater Assessments and Planning at Program, Analysis and Evaluation (PA&E) to Nancy Spruill, co-chairperson of the Leasing Review Panel Working Group, dated August 7, 2003:


I do not support RAND as the sole source or lead to conduct the Congressionally-directed independent tanker AoA. First, its [sic] sad that it takes Congress to direct the Department to do something it should do on its own. We've been trying to get the AF to conduct an AoA for several years, but could never get AT&L's support to direct one. The AF clearly wanted to postpone it for as long as possible to delay the issue of recapitalizing the fleet. Now the Department is playing catch up. That said, [the Institute for Defense Analyses (IDA)] has more experience to conduct this type of effort. In fact, [Air Mobility Command] relies on IDA to do a lot of its mobility analyses both for airlift and tankers. I believe the Department will get a better, more objective product than we would from RAND. I hope we're not letting IDA's cost review of the tanker lease color our opinion. Please convince me otherwise.

I am also concerned about the fact that Project Air Force may have received as much as \$50 million for FY03 and FY04 and is expected to get at least another \$25 million for FY05. This financial relationship between the Air Force and RAND renders RAND unsuitable for conducting the AoA on this multibillion dollar procurement proposal.

Given the foregoing, I respectfully suggest that the Air Force not enter into an agreement to procure aerial refueling aircraft until an entity independent of the Air Force—on the basis of a study not funded directly or indirectly by the Air Force—completes the AoA.

As always, I appreciate your consideration.

Sincerely,


John McCain
Chairman