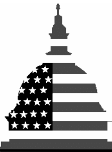

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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

April 19, 2006

The Honorable Charles E. Grassley
United States Senate

The Honorable Howard L. Berman
House of Representatives

As promised in my initial April 5, 2006, reply to your request of April 3, 2006 (See Attachment A), this letter contains our written response to Subrata Ghoshroy's letter of December 19, 2005, and the New York Times article of April 2, 2006. As noted in my letter to you of April 5, we were not provided with a copy of Mr. Ghoshroy's letter of December 19 2005, before it was referenced in the press and posted to Mr. Berman's website.

At the outset, let me reiterate that we have taken your concerns and those expressed by Mr. Ghoshroy about our February 2002 report very seriously. In total, I expeditiously initiated three internal reviews between 2002 and 2003 to respond to concerns raised by Mr. Ghoshroy as well as those raised earlier by Congressman Berman. In addition, I previously provided a detailed response to Congressman Berman in April 2003 addressing questions about the report he raised in April 2002 and March 2003 (see Attachment B).

In summary,

- The three internal reviews that have been conducted, including one by our Inspector General, found that our 2002 report was done in accordance with generally accepted government auditing standards and the allegations raised by Mr. Ghoshroy were not substantiated. In particular, these reviews determined that there was no credible evidence supporting Mr. Ghoshroy's assertion of conflicts of interest by GAO personnel involved with the engagement nor was there any credible evidence that would raise questions regarding the integrity of our workpapers.

- The report's findings represent the consensus view of our most senior technical and professional staff. Differences of opinion during the course of the work were resolved by the time the report was issued, as evidenced by the signatures of all the "stakeholders" on the engagement -- including Mr. Ghoshroy's. As a result, we continue to stand behind the report. While Mr. Ghoshroy, like all the other team members did play a role in this engagement, he was one of four technical people involved in the project. In addition, while all GAO employees opinions are important and sought, the opinion of a single individual is not sufficient to create an institutional position.

- Importantly, the objective of our engagement was not to adjudicate whether false claims had or had not been made nor did we attempt to do so. In hindsight, as Mr. Berman and I recently agreed, we should not have accepted the original July 2000 request because of the then-ongoing litigation over the central issues involved in the sensor test. Once we identified the need to restructure the engagement in order to be consistent with long-standing GAO policy involving matters pending before the courts, we took corrective action to avoid directly inserting GAO into the issues that were the subject of the litigation. The Justice Department was already aware of allegations of false claims prior to GAO issuing its report. Furthermore, the Justice Department conducted its own review of this matter and decided not to pursue it. As I have noted previously, we should have done a better job of communicating to your staff that we were revising our audit scope and objectives and documenting such revisions. Clearly this communication gap underlies the fundamental misunderstanding that is at the heart of this dispute both internally and externally, which has now consumed a significant amount of time and taxpayer resources over several years. Importantly, once I became aware of this miscommunication, we changed our internal policies and practices to protect against such communication problems in the future.

I will now turn to the main issues contained in Mr. Ghoshroy's letter.

Results of the Sensor Test

Mr. Ghoshroy asserts that (1) his analysis of the sensor test data indicated that a problem with the functioning of the Boeing sensor during the flight test was so significant that it would likely invalidate the test, (2) the contractor made false statements about the success of the tests and skewed test results by manipulating data, and (3) GAO withheld crucial information, skewed other information, and colluded with the contractors and program officials to put a positive spin on the results of a test that was a failure. Other more senior GAO technical staff along with programmatic staff who participated in this engagement unanimously disagree with Mr. Ghoshroy's assertions[1].

In addressing these issues, it is essential to start with a context-setting overview of what constituted the early test of missile defense system we were asked to review. Integrated Flight Test 1A (IFT-1A), also called Sensor Flight Test, was conducted in June 1997 under research and development contracts where contractors (in this case, Boeing, TRW, and Raytheon) iteratively develop, test, refine, and enhance performance before the technology can be considered mature. Many of Mr. Ghoshroy's allegations about IFT-1A stem from a different expectation for the test – he ascribed a much broader and more significant purpose than it had, or was ever intended to have. As the first test of one component of a missile defense system, IFT-1A was not meant to characterize broader program performance goals such as acquisition range or probability of detection, as Mr. Ghoshroy asserts. Rather, it was primarily designed to determine if a Boeing designed infrared sensor could operate in space and collect target signature data that was to be subjected to discrimination analysis after the test flight was over. In other words, this early research and development test was not

[1] Four technical staff participated in this engagement by reviewing key documents and meeting with project and contractor officials, including GAO's Chief Technologist, two senior level technologists, and Mr. Ghoshroy.

intended to demonstrate the discrimination software's performance. We conducted extensive work regarding the test flight including 1) reviewing the test results as reported by the contractors in what were called 45-day and 60-day reports, 2) reading many technical documents relevant to the IFT-1A test to understand the technical details of the test and the mathematical basis for various analyses performed on the test data, 3) asking questions of Boeing and TRW engineers about anomalies we had noticed, and 4) hiring an outside University Laboratory to help independently evaluate the Boeing sensor design.

All of our technical staff, Mr. Ghoshroy included, found the contractors' explanations technically correct. We were able to identify sensor shortcomings, such as how the sensor failed to cool properly, and to obtain explanations of some of the ways the discrimination software performed.[2]

In addition to gathering and analyzing technical information about the sensor test, we reviewed the results of other independent reviews of the IFT-1A test. In this regard, we reviewed the results of Nichols Research Corporation (NRC) and the Phase One Engineering Team (POET) at MIT-Lincoln Lab independent evaluations and noted their results and limitations in our report.

Besides our review of test documentation and our review of the independent reviewers, we also hired an expert to independently evaluate the Boeing sensor design. We had learned that the Boeing sensor, the focus of the IFT-1A test, did not cool properly during the test and wanted to determine whether the sensor could still provide usable data. Although we had senior technical staff with background in electrical engineering, space communications, and signal processing, we recognized that we did not have experimental facilities to conduct a full laboratory evaluation of the sensor. Therefore, we decided to hire expert help to evaluate the sensor performance. Mr. Ghoshroy does not mention this fact in his letter, but with his help we hired sensor experts at Utah State University's Space Dynamics Laboratory to determine the extent to which the sub-optimal cooling degraded the sensor's performance. These experts provided valuable information about the sensor that we presented in our report. Through their efforts we also found that power supply noise was a major cause of false alarms generated by the sensor. In a nutshell, the experts concluded that although the cooling mechanism failed because of an obstruction in gas flow, the sensor's cooling mechanism was properly designed and Boeing's sensor design was sound. Although Mr. Ghoshroy mentions many problems with the Boeing sensor, we were able to validate that the problems were due to inadequate cooling of the sensor and not because of bad sensor design.

As Mr. Ghoshroy notes in his letter, we reported that the contractors had disclosed the results and key limitations of the IFT-1A test to the government. Mr. Ghoshroy contends that we based this conclusion on "verbal reports from a suspect late August 1997 meeting" between the contractor and government officials. To the contrary, we relied principally on documentary evidence such as disclosures made through the written reports (so-called 45-day and 60-day reports) and other briefings. This documentation is detailed in our report.

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[2] Many of these technical issues are classified. However, we would be happy to discuss them with you consistent with applicable procedures of the U.S. House of Representatives and Senate. Should you be interested in discussing the matters further, please advise us at your convenience and we will work with your staff to arrange a briefing.

For example, the August 22, 1997, written report, known as the 60-day report, disclosed a number of problems such as the failure of the sensor to cool to the desired temperature, some signals collected from the target objects were degraded, the launch vehicle carrying the sensor into space adversely affected the sensor's ability to collect target signals, and the sensor sometimes detected targets where there were none (false alarms). Boeing and TRW still considered the test a success because the sensor produced useful data even though the sensor's silicon detector array operated at temperatures 20 to 30 percent higher than desired.

While reasonable people can and will disagree on the manner of disclosures and related emphasis, we found that the contractors continued to disclose test anomalies in other reports during 1997 and 1998. In December 1997, the contractors documented other test anomalies such as a low probability of detection, incorrect identification of some target objects, and inconsistent in-flight calibration of the sensor. Additionally, on April 1, 1998, the contractors submitted an addendum to an earlier report disclosing that their claim that TRW's software successfully distinguished a mock warhead from decoys during a post-flight analysis was based on tests of the software using about one-third of the target signals collected during IFT-1A. The contractors also noted that TRW reduced the software's reference data so that it would correspond to the collected target signals being analyzed.

In addition to the documentary evidence of the contractors' disclosures, we did obtain verbal evidence of the disclosures, i.e., the August 1997 meeting. However, the verbal information was only used as supplemental information, and we clearly indicated in the report its limitations notably that neither project officials nor contractors could provide us with documentation of this communication.

Mr. Ghoshroy also asserts that we changed a crucial fact in a draft of the report so as to exonerate the contractor from an appearance of wrongdoing. He contends that a footnote in the draft report about the "acquisition range" of the sensor stated that the sensor failed to meet the required acquisition range, let alone exceeded it, as the contractor claimed. The footnote appears in a table (GAO-02-125, page 40) that summarizes the IFT-1A performance requirements that Boeing established and actual test results. Although we document and explain these parameters in our report, the key point is that Boeing, not anyone in DOD, imposed these requirements on itself for what was an early research and development test, which is what IFT-1A was, not a performance requirement. No one in DOD demanded that the contractor's system must meet a "requirement" in its first R&D flight test. Testing against requirements would normally occur during operational testing of a system ready to be fielded. We made repeated efforts to explain this to Mr. Berman's staff. We also believe that the report (pages 12-13, and 40) very clearly explains this point. The fact is that the sensor did detect the target at the desired distance. However, because the observation time was so limited and false alarms occurred, Boeing's Chief Scientist cautioned against placing too much weight on the sensor's target detection. That explanation seemed reasonable to us. In the end, given the limited objectives of the applicable test, meeting or not meeting these requirements did not mean any violation of contractual terms, nor indicate that the sensor failed to perform sufficiently.

Lastly, Mr. Ghoshroy's speculates in his letter that we changed the original research question as a "clever move" to exonerate the contractors of any wrongdoing. Contrary to Mr. Ghoshroy's assertions, we decided to revise the first researchable question based on a long-standing GAO policy and out of respect for the role of the courts in making judgments in

their adjudication of the claims brought by Dr. Nira Schwartz in her *qui tam* lawsuit. Specifically, we have long felt that GAO should not be used intentionally or unintentionally as a means to support private party litigation. During a meeting in the summer of 2001 with Congressman Berman's staff, one of our attorneys explained that we would not answer the question whether or not false claims had been made because that was the very question posed by Dr. Schwartz's *qui tam* case. While we met with Congressman Berman's staff and provided them with the reformulated questions, it is evident that there was a communication gap concerning the revision of our audit objectives for this report. While we regret the problem, it is not our policy to address an issue that is directly related to a matter pending in the Courts, nor is it an appropriate role for GAO to advance interests or positions of private parties in pending litigation. As a general rule, we will not accept such engagements unless we believe we can structure our work to avoid influencing or directly interfering with pending litigation. Accordingly, we revised the audit objectives in the original request to enable us to respond to the extent practicable under our longstanding policy.

Mr. Ghoshroy also repeatedly alleges that we "exonerated" the contractors from allegations of wrongdoing. However, it was not our objective to exonerate or not exonerate the contractor and we did not do so. We believe the report shows the level of effort we put into verifying information presented by the contractors and when and how the contractors disclosed test results. We came to our conclusions about the contractors' disclosures only after extensive data collection and analysis of the technical problems of the test. While the purpose of our engagement was not to determine whether or not the contractor filed false claims, no concrete evidence came to our attention that would support Mr. Ghoshroy's assertion that the contractors intentionally hid key results and test limitations given the purpose of the IFT-1A test from the government or that they filed false claims with the government. Had we identified potential fraud or false claims, we would have referred the matter(s) to the Department of Justice.[3] Given the early nature of the R&D testing, the type of contract being used (cost reimbursement), and the general nature of the contractual requirements, we concluded that reasonable efforts were made by the contractor to fulfill the terms of the contract. Though Mr. Ghoshroy writes that he "struggled with GAO management to bring out the truth and to report fully and accurately our findings," the Managing Director of the engagement stated that Mr. Ghoshroy never expressed any concern to him about the report during its development. The report's findings represent the consensus view of both our technical and other professional staff as evidenced by the signatures of the "stakeholders" on the engagement, including Mr. Ghoshroy's.

Structure of the Report

Mr. Ghoshroy states that there is a glaring disconnect in our report between what we broadly claimed and what the detailed appendices contained. He alleges that we assumed that very few readers would bother to read the appendices let alone understand the technical details, yet they would be there for the record. We do not believe there is any disconnect between the body of the report and the appendices, nor do we believe that significant findings are buried in the appendices. Consistent with long-standing GAO practices, we put the main findings in the body of the report and inserted highly technical information in the appendices. Our principal finding was that the contractors disclosed the key results and limitations of the

[3] The Department of Justice considered joining Dr. Nira Schwartz's *qui tam* lawsuit but ultimately declined.

IFT-1A in written reports provided to the government between August 1997 and April 1998. The report appendices provide the details of the test results and what was disclosed by the contractors.

Phase One Engineering Team (POET)

In his letter, Mr. Ghoshroy states that GAO's Office of General Counsel did not want to include any specific information about potential conflicts of interest faced by the POET and MIT-Lincoln Laboratory, which led the POET panel. He states that the Office of General Counsel refused to allow even publicly available information, such as the amount of funds received by the POET members' institutions from the Ballistic Missile Defense Office (BMDO)[4], to be included in the report. He also stated that he found what he believes to be a serious conflict of interest for MIT-Lincoln Laboratory.

POET member institutions are Federally Funded Research and Development Centers (FFRDCs). The actual amount of funds BMDO paid the FFRDCs did not strike us as particularly germane. However, if we had decided to present data on the amount of funding that BMDO provided the FFRDCs, we would have had to determine the total amount of funding provided to the FFRDCs by all user government agencies in order to provide context and a full understanding of the relative importance of any one entity's funding to the FFRDC. In any event, the mere fact that BMDO paid the POET member institutions for the time and effort spent evaluating test performance does not establish evidence of a lack of independence and objectivity. Also, until the very end of the review, there was no indication or allegation that any of the scientists appointed to the POET review team had a relationship or financial interest that would present an impairment to independence and objectivity. As we were finalizing the report, Congressman Berman's staff passed on an allegation by Dr. Schwartz that one of the POET scientists had worked for TRW in the past. We made an inquiry and determined that Dr. Schwartz was mistaken. We also informed the staffer of this information.

Documentation Issues

Mr. Ghoshroy alleges that an attorney in GAO's Office of General Counsel directed GAO staff to "shred documents," if necessary, in order to clean up the files. He further alleges that the Managing Director of the engagement reinforced what the attorney had said and "warned staff by saying that he was aware of people whose once-promising GAO careers were aborted in the past for not cleaning up their files."

As discussed later on page 10, the Inspector General reviewed this matter in depth and after extensive interviewing of all individuals involved in the engagement, as well as an independent review of the workpapers, found no evidence of shredding or any inappropriate actions or instructions by anyone involved in the engagement. None of the staff involved in the engagement recall the attorney directing the shredding of documents. Staff did recall guidance about "cleaning up" workpapers of marginal notes involving open audit issues which has been standard procedure for all GAO engagements for many years. The Managing Director stated that he wanted a solid set of workpapers that were fully reviewed, had no extraneous "yellow stickers," and had no unanswered auditor or supervisor questions. He

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[4] BMDO has since been renamed the Missile Defense Agency.

said he would never condone facts in workpapers being falsely altered to support a report. Similarly, he said he didn't condone sloppy workpaper sets that have extraneous or irrelevant information or unresolved conflicts in logic or fact. GAO policy guidance and procedures state that open audit points are to be resolved (not left unanswered) prior to completing an engagement, and pejorative comments are not to be part of workpapers unless approved by the supervisor responsible for the engagement.

Relevance to the Current Missile Defense System

Mr. Ghoshroy contends that the Boeing sensor tested in IFT-1A would have been better than the current sensor technology being used by Raytheon. The Raytheon sensor in the current "kill vehicle" (the "bullet" designed to find and hit incoming warheads) uses a different material than the Boeing sensor. In this sense, the Boeing's specific technology is not being used and has indeed been overtaken by events. However, the current kill vehicle still relies on using infrared sensor and signal processing technologies, just as the Boeing kill vehicle did, and therefore these general technologies remain relevant for today's missile defense system.

As we explained in our report, the Department of Defense continued funding of the Boeing kill vehicle at a reduced level as a backup to Raytheon's kill vehicle. However, in mid-2000, the Department terminated all funding for Boeing's kill vehicle, thereby ending TRW's involvement in development of the kill vehicle's discrimination software.

Other GAO Reports on the Missile Defense Program

Mr. Ghoshroy's letter states that many believe that in the last several years there has been a decided shift in the tone of GAO reports dealing with the Pentagon, to one that is noticeably friendlier to the agency and its contractors. We strongly disagree with this assertion and believe that any objective review of the many GAO reports issued in connection with defense matters would find that any such assertion lacks merit. GAO has a strong, clear, and consistent record of aggressively pursuing fraud, waste, abuse, and mismanagement within government, including the Defense Department, in general, and defense contracting and weapons acquisitions, in particular[5]. In fact, eight individual DOD areas are on GAO's high risk list including weapons systems acquisition and several governmentwide high risk areas apply to DOD as well.[6] Our reviews of missile defense issues have been an important part of this body of work.

While the specifics of the missile defense program and some of our most significant work is classified and therefore cannot be captured in this letter, since July 2002 GAO has produced 13 products on missile defense programs containing numerous findings, along with more than 20 recommendations for executive action. In addition, we have reviewed missile

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[5] As an example, see *Defense Acquisitions: Actions Needed to Get Better Results on Weapons Systems Investments.* Statement of David M. Walker before the House Committee on Armed Services, April 5, 2006, GAO-06-585T

[6] Since 1990 GAO has reported on government operations that it identifies as "high risk." High risk areas have been so designated because of vulnerabilities related to their greater susceptibility to fraud, waste, abuse, and mismanagement. The high risk program serves to identify and help resolve serious weaknesses in areas that involve substantial resources and provide critical services to the public. Our January 2005 report list 25 government operations as high risk areas, (GAO-05-207).

defense program elements in the four annual assessments of major weapon systems we have conducted from 2003 through 2006. Of the 13 products on missile defense, eight have been on individual missile defense elements: Ground-Based Midcourse Defense (GMD), Airborne Laser, and the Space Tracking and Surveillance System. The remaining five have been on the missile defense program as a whole with all of its elements. We have consistently applied our knowledge-based methodology for evaluating weapon systems to missile defense. For example, in July 2002, we found that the Airborne Laser Program was using a risky approach for development that did not separate technology development from product development. We recommended that DOD establish (1) decision points to separate the two and (2) knowledge-based criteria for each decision point. In April 2003, we cautioned that the Missile Defense Agency (MDA) was beginning to give up some of its knowledge-based practices to accelerate Block 2004, which opened the door to greater cost and performance risks. In 2006, we reported that the delivered Block 2004 capability had in fact included fewer components than originally planned, cost more than anticipated, and the performance of the emplaced GMD interceptors was uncertain. We also reported that inadequate mission assurance/quality control procedures, a consequence of accelerating Block 2004, may have allowed less reliable or inappropriate parts to be incorporated into the manufacturing process for the emplaced interceptors. The Department of Defense agreed with some, but not all, of our findings and recommendations. A listing of our products follows.

Defense Acquisitions: Missile Defense Agency Fields Initial Capability but Falls Short of Original Goals, GAO-06-327, March 15, 2006.

Defense Acquisitions: Actions Needed to Ensure Adequate Funding for Operation and Sustainment of the Ballistic Missile Defense System. GAO-05-817, September 6, 2005.

Defense Acquisitions: Status of Ballistic Missile Defense Program in 2004, GAO-05-243, March 31, 2005.

Letter to Bill Nelson, Ranking Minority Member, Subcommittee on Strategic Forces, Committee on Armed Services, United States Senate; and to Daniel Akaka, United States Senate concerning Uncertainties Remain Concerning the Airborne Laser's Cost and Military Utility, GAO-04-643R, May 17, 2004.

Missile Defense: Actions Are Needed to Enhance Testing and Accountability, GAO-04-409, Apr. 23, 2004.

Missile Defense: Actions Being Taken to Address Testing Recommendations, but Updated Assessment Needed. GAO-04-254, February 26, 2004.

Missile Defense: Additional Knowledge Needed in Developing System for Intercepting Long-Range Missiles. GAO-03-600, August 21, 2003.

Missile Defense: Alternate Approaches to Space Tracking and Surveillance System Need to Be Considered. GAO-03-597, May 23, 2003.

Letter to Bill Nelson, Ranking Minority Member, Subcommittee on Strategic Forces, Committee on Armed Services, United States Senate, concerning Information on Cancelled Integrated Flight Test-16 for Ground-based Midcourse Defense Element. GAO-03-767R, May 8, 2003.

Missile Defense: Knowledge-Based Practices Are Being Adopted, but Risks Remain. GAO-03-441, April 30, 2003.

Missile Defense: Events Related to Contractor Selection for the Exoatmospheric Kill Vehicle. GAO-03-324R, January 27, 2003.

Missile Defense: Knowledge-Based Process Would Benefit Airborne Laser Decision-Making. GAO-02-949T, July 16, 2002.

Missile Defense: Knowledge-Based Decision Making Needed to Reduce Risks in Developing Airborne Laser. GAO-02-631, July 12, 2002.

This record of work speaks volumes concerning our commitment to, and continuing involvement in, reviewing the critical issues surrounding the missile defense program.

Three Previous Reviews of the Allegations

Mr. Ghoshroy has expressed concern about the independence and quality of the three reviews that have been conducted in response to issues raised about our 2002 report. Between the Spring of 2002 and early 2003, I expeditiously asked for three separate reviews regarding these issues based on concerns raised by Mr. Ghoshroy and/or Mr. Berman. One of the reviews was performed by GAO's Chief Quality Officer, one by GAO's Inspector General, and another by a retired Assistant Comptroller General. None of the reviews substantiated Mr. Ghoshroy's allegations.

Chief Quality Officer Review

Following Congressman Berman's April 24, 2002, letter to me, I asked Michael Gryszkowiec, Chief Quality Officer at that time, to initiate a review of selected issues relating to the engagement. Mr. Ghoshroy asserts in his letter that because Mr. Gryszkowiec was a stakeholder for the report he had an obvious conflict of interest. As Chief Quality Officer, Mr. Gryszkowiec's job was to ensure that only the highest quality products were being issued by GAO, and he was independent of any mission team. While he reviewed the draft report before it was sent out for agency comment, he did not have any role in the scope of the engagement or how the engagement was carried out, and as such was not a "stakeholder" on the engagement. Importantly, whenever a question or concern is raised about a particular report, it is standard GAO practice to first turn to the Chief Quality Officer to look into the matter and determine whether the concerns or questions have merit and address the issues as appropriate.

Specifically, Mr. Gryszkowiec determined whether the missile defense report complied with GAO reporting standards and why there appeared to be a disconnect between what GAO reported on and Congressman Berman's initial request and general expectations. In conducting his review, Mr. Gryszkowiec 1) asked the engagement team to prepare a point-by-point discussion of Congressman Berman's April 2002 letter, 2) reviewed key documents, and 3) interviewed senior engagement staff.

Mr. Gryszkowiec concluded that the report as written was well supported and complied with GAO reporting standards. Mr. Gryszkowiec does not believe his comments on the draft report were extensive or significant. However, he noted that the report's objectives were changed late in the engagement and that this change was not, but should have been, formally communicated in writing.

GAO IG Review

In late Spring of 2002, I asked the GAO IG, Frances Garcia, to conduct another review of the engagement and report in light of Mr. Ghoshroy's allegations. The IG investigation included Mr. Ghoshroy's allegations of 1) contractor fraud and false claims, and 2) shredding of documents by GAO employees. Also, the IG investigated all the issues raised in Congressman Berman's April 24, 2002 letter to me and whether the engagement met GAO standards.

In conducting the investigation over a 5-month period, the IG's office interviewed 23 GAO staff associated with the engagement, including multiple interviews of key staff; reviewed the classified and unclassified workpapers associated with the assignment; and compared all the information collected to the written report. All of Mr. Ghoshroy's concerns expressed in his May 7, 2002 letter, and all of the subsequent correspondence and documents that he provided to the IG staff, were included in the scope of the IG's investigation.

Overall, the IG concluded that Mr. Ghoshroy's assertion on issues of fraud, false claims, and shredding were not supported by the facts. Also, the IG concluded that the engagement was done in compliance with GAO's core values of accountability, integrity, and reliability. The investigation did result, however, in a timely clarification of certain GAO policies and procedures relating to communicating with our congressional clients.

Regarding the issue of fraud, intentional deception is central to both the dictionary and legal definitions of the term fraud. GAO, as does every federal agency, has an obligation to refer potential fraud to the Justice Department. As such, the IG was required to and did pursue Mr. Ghoshroy's allegation of fraud by the contractors. She did so because she needed to know if a GAO referral of this issue to the Justice Department was appropriate and warranted; and if so, why the audit team had not done this prior to the IG investigation. The IG secured the services of a GAO attorney (a former Assistant U.S. Attorney), with many years experience as a criminal prosecutor to assist in this effort.[7]

On July 11, 2002, IG staff along with the former Assistant U.S. Attorney, interviewed Mr. Ghoshroy concerning his fraud allegation. They advised him of the legal definition and evidentiary standard for fraud and then asked him a series of questions regarding his allegation. Among other questions, they addressed (1) his definition of fraud, and (2) whether he had any evidence or knowledge of evidence that would warrant a GAO referral to the Justice Department. His definition of fraud did not meet applicable standards. Further, he acknowledged to the IG staff that he did not have any specific evidence or knowledge of fraud by the contractor. Accordingly, he was advised that his allegations of contractor fraud did not warrant referral to the Justice Department.

The IG also addressed the issue of false claims and found that Mr. Ghoshroy's definition does not conform to the applicable statutory standard, nor did he have any specific evidence or knowledge of evidence of false claims that would meet the statutory standard. As such, he was advised that no referral to Justice was warranted regarding his allegation.

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[7] As with any non-IG staff temporarily assigned to the IG's office, the GAO attorney reported only to the IG and did not discuss his IG work with anyone other than the IG staff assigned to this investigation.

Regarding the issue of shredding, the scope of IG's work was far more extensive than Mr. Ghoshroy wrote about in his January 13, 2003, letter to me expressing concern about the IG's review. For example, the letter states that, "instead of finding out why Ms. Sheila Ratzenberger had instructed the staff in the middle of a high-risk review to 'shred' documents, the IG asked a different question, which was 'Did anyone shred any document?'" The letter continues by alleging that the IG was trying to downplay the significance of the issue and her statement.

IG interviews of Ms. Ratzenberger and all other GAO staff involved in the meeting where the shredding statement was alleged to have been made included the question, did she or anyone else give such instruction to the staff. Except for Mr.Ghoshroy, all applicable GAO staff denied that any such statement was made. Follow-up questions on whether staff were given orders, directives, guidance, etc., to shred, destroy, remove, etc., workpapers as well as whether staff had shredded, destroyed, removed or otherwise altered the workpapers were also asked of all staff. None recalled any discussions on altering or shredding workpapers other than removal of duplicate copies of some documents.

Staff did recall guidance about "cleaning up" workpaper marginal notes involving open audit issues and "pejorative comments." GAO policy guidance and procedures are explicit that open audit points are to be resolved (not left unanswered) prior to completing an engagement and that pejorative comments are not to be part of workpapers unless approved by the supervisor responsible for the engagement. This policy applies to all GAO engagements and has been in existence for many years.

Also, in response to various references that Mr. Ghoshroy provided IG staff about selected documents or his margin notes on workpapers possibly being removed, IG staff designed a series of inspection steps to determine the status of the integrity of the workpapers. Because IG staff did not have security clearances and some of the documents were classified, a staff member of QCI[8] was temporarily detailed to IG[9] to review all of the classified and unclassified workpapers associated with the assignment. His review of the workpapers determined that all documents were complete and accounted for and that all margin notes remained on the workpapers.

Based in part on Mr. Ghoshroy's allegations, one of IG's taskings was to determine if the engagement had been conducted in accordance with GAO's policies and procedures. For example, he alleged that Ms. Stephanie May's revising of the engagement objectives and subsequent drafting of a segment of the report constituted "unwarranted interference" by a GAO lawyer in the conduct of the engagement. The IG determined that revising the objectives complied with GAO policy and was approved by both the General Counsel and the Managing Director for the engagement. Likewise, her writing of part of the draft report was done at the direction of the Managing Director because he considered her to be the most knowledgeable person on the subject. In interviews with IG staff, Mr. Ghoshroy acknowledged that he was not aware of GAO's policy or the Managing Director's decision when he made these allegations.

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[8] The Office of Quality and Continuous Improvement (QCI) was formerly the Office of Quality and Risk Management.

[9] The QCI staff member reported only to the IG and did not discuss his IG work with anyone other than the IG staff assigned to this investigation.

The IG was also tasked with reviewing the allegation in the Congressman's letter that GAO lawyers had directed staff to cease contacts with Dr. Schwartz. In his January 13, 2003 letter, Mr. Ghoshroy criticizes IG staff for not addressing the Congressman's concerns. Specifically, the letter states that IG staff asked him if he "had made any contact with Dr. Nira Schwartz after the OGC advised him not to do so." The IG learned that GAO staff were provided guidance that all contacts between them and Dr. Schwartz were to be coordinated with GAO lawyers, but noted that contact was not prohibited. In response to IG questions during their June 13, 2002 interview with Mr. Ghoshroy, he acknowledged that he had received the guidance. He further admitted that he had incorrectly advised Dr. Schwartz that he could not talk to her based on instructions from GAO's lawyers.

Mr. Ghoshroy's allegation about not addressing the Congressman's concerns appears to reflect the fact that he does not accept the revised objectives of the engagement. In his June 13, 2002 meeting with IG staff, he was very emphatic that GAO should have done the job originally requested and should not have revised the objectives. If one accepts this position, then one is prone to assert that the IG did not address the Congressman's concerns since they are based on the original objectives, not the revised ones. As previously noted, it has been long-standing GAO policy to not perform engagements that address issues pending before he Courts.

Mr. Ghoshroy asserts that the IG chastised GAO for not pursuing potential conflicts of interest associated with the POET. The IG did not make such a conclusion but made an observation that a single (i.e., one) workpaper margin note needed clarification. Mr. Ghoshroy's assertion is clearly the result of his misunderstanding of the point the IG was making.

While Mr. Ghoshroy attempts to impugn the IG's independence because it is a non-statutory position, GAO voluntarily created the IG to supply independent oversight. The IG reports directly to the Comptroller General and has the same standing and follows the same standards as other members of the Executive Council on Integrity and Efficiency (ECIE). The ECIE is made up of 28 IG's who are appointed by the heads of independent agencies and federally chartered corporations, including the United States Postal Service, the Securities and Exchange Commission, the Pension Benefit Guaranty Corporation, the Federal Communications Commission, and the Federal Reserve. Accordingly, we are confident that our IG's office conducts its audits and investigations with independence and professional integrity.

Retired Assistant Comptroller General (ACG) Review

In January 2003 Mr. Ghoshroy raised several concerns regarding the GAO Inspector General review of his allegations. Following Mr. Ghoshroy's letter to me, I asked retired ACG J. Dexter Peach[10] to make an independent assessment of the IG's review, focusing on 1) whether the IG review was comprehensive, independent, and covered all of Congressman Berman's concerns as well as those of Mr. Ghoshroy, and 2) whether there was any support

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[10] Mr. Peach retired from GAO in January 1998 as Assistant Comptroller General for Planning and Reporting, (ACG-P&R). As ACG - P&R Mr. Peach was responsible for overseeing GAO's quality assurance system. This unique knowledge and perspective of GAO quality standards made him exceptionally well qualified to conduct a review of the IG's work as well as being able to provide a timely response.

for any of the specific allegations of Mr. Ghoshroy about the independence of the IG review. Mr. Ghoshroy challenges Mr. Peach's independence because of Mr. Peach's consulting arrangement with GAO. In my view, because of Mr. Peach's experience and detailed knowledge of GAO policies and procedures, he was uniquely suited to conduct this review. Furthermore, any outside review initiated by GAO would involve compensating the applicable person for their time and expenses over a several week period. Mr. Peach reviewed key IG and engagement documents; met with IG staff for an extended interview; met with several other GAO officials involved in the missile defense study; and compared the interviews with documentation for corroboration. Overall, he found that the IG's review was indeed comprehensive and covered all of Congressman Berman's concerns, as well as the concerns of Mr. Ghoshroy. He also concluded that Mr. Ghoshroy's concerns regarding the IG review were without merit. Mr. Peach found that the IG had workpaper support for the conclusions reached.

The following provides details of Mr. Peach's findings on each point of concern raised by Mr. Ghoshroy in his letter to me regarding the IG's review:

- Assertion: The IG review did not cover all of Congressman Berman's concerns regarding the engagement and the IG focused more on Mr. Ghoshroy's allegations of document shredding and contractor fraud to the exclusion of Mr. Berman's concerns. Response: Mr. Peach found the IG review covered all issues and this was confirmed by reviewing their workpaper evidence, engagement documents, and IG's office and engagement staff interviews. Mr. Peach determined that the IG did not provide Mr. Ghoshroy with an overview of all that it was doing, and therefore, Mr. Ghoshroy may have gotten the impression that allegations of shredding and contractor fraud were the only topics being reviewed by the IG.

- Assertion: The IG focused on the legal definition of fraud versus the contractor providing misleading statements.
  Response: Mr. Peach found that the definition of fraud used by the IG was based on the legal standards (including evidence of intent), and that Mr. Ghoshroy provided no evidence of fraud.

- Assertion: The IG did not focus on the allegations of inappropriate OGC influence during the engagement.
  Response: Mr. Peach concluded that the IG did cover allegations of inappropriate OGC influence during the engagement, specifically in regard to changing the engagement's objective and writing the conflict of interest section of the report. He found that it was the Managing Director who independently concluded that the objectives should be changed, and that it was the OGC attorney who best had the ability to write the section of the report on conflict of interest, subject to review and approval by the Managing Director and other key GAO personnel.

- Assertion: The IG focused on shredding versus disposing of documents in workpapers.
  Response: Mr. Peach found that the IG did specifically address the shredding allegation and whether there were any missing documents and/or apparent gaps in the workpapers. All of the people he interviewed recalled an emphasis on cleaning up the workpapers for unneeded information and/or extraneous comments, and not

shredding. Long-standing GAO policy covers the need to keep extraneous comments out of the workpapers.

- Assertion: The IG staff inappropriately revised the team Director's point-by-point response to Congressman Berman's concerns.
  Response: Mr. Peach found that the IG reorganized the response to better relate it to Mr. Berman's concerns as were stated in Mr. Berman's letter to me. Mr. Peach said that the applicable team Director considers the final point-by-point response to be his product, and he stands by it.

- Assertion: The IG used other GAO employees outside the IG's office to assist on their review who may not have been independent or appropriate choices.
  Response: Mr. Peach found that the IG enlisted the help of a GAO attorney who is a former criminal prosecutor to assist in its determination of evidence of fraud. Mr. Peach concluded that this individual was detailed to the IG, reported only to the IG, had no working relationship with the attorneys who were involved in the engagement, was an appropriate selection, and that no one influenced him in his conclusions. Furthermore, this individual did not have any prior association with the Pentagon or any of the key contractors or other parties involved. Mr. Peach also found the IG enlisted the assistance of someone who had the necessary security clearance to review classified workpapers for evidence of missing workpapers. Mr. Peach concluded that this individual was also detailed to the IG, reported only to the IG, and was an appropriate choice.

Similar to the other reviews of this matter, Mr. Peach also concluded that GAO should have communicated the change in engagement objectives in writing. He also expressed views on alternative ways the report could have been written to better present the message using all the same information that the final report includes. For example, he agreed with the IG's suggestion that the report's title should have emphasized the report's message – that the contractors had disclosed certain information on the results and limitations of the flight test.

GAO Staff Assigned to the Engagement

In an apparent attempt to use ad hominem arguments to discredit the work that was performed by the team, Mr. Ghoshroy's December 19, 2005, letter to Representative Berman made many negative comments concerning GAO employees who had contributed to the engagement. Mr. Ghoshroy's approach, apart from the questionable fairness of disparaging several highly respected public servants in this manner, disregards a fundamental reality that governs all of GAO's work: all of our products are institutional rather than personal. Indeed, GAO has numerous office-wide policies and procedures in place to prevent any employee from inappropriately shifting the direction or findings of our work.

When conducting studies, we use multidisciplinary teams that follow a deliberative process that provides built-in checks and balances that are a key aspect of our quality control system. A GAO report is not simply the opinion of the director or even myself as Comptroller General; rather, it is the considered opinion of the institution as a whole. It is characteristic of this process that different points of view within the institution involving individuals from various units and at different levels are voiced, considered, and, if appropriate, accommodated in the work. For example, attorneys in the Office of General Counsel look at

the legal ramifications and pays attention to any ongoing litigation related to an engagement. Technical team members may argue about the merits of technical issues. Analysts may debate the findings until they arrive at a conclusion that can be supported by the available data. At any point these team members may disagree, but the very nature of our quality control process ensures that all parties will be heard and a product will result that will meet the high standards of our institution.

The integrity and reliability of GAO's quality assurance processes was validated this year by an international team of independent peer reviewers. The peer review team, headed by Canada's Office of Auditor General, included representatives from GAO's counterpart offices in Australia, Mexico, Norway, the Netherlands, South Africa, and Sweden. The year-long study examined every aspect of GAO's audit related operations, including audit policies and practices, the quality assurance framework, GAO's own internal inspection program, interviews with GAO staff members from the Comptroller General to entry-level analysts and finally, a detailed top-to-bottom review of audit documentation for a sample of 40 engagements conducted in 2004[11]. The team also compared GAO's quality assurance system to those of participating countries. The peer review team found that GAO's system of quality control was suitably designed and operating effectively, concluding that GAO's work is independent, objective, and reliable. In addition to the clean opinion, the international team cited a number of exemplary practices at GAO that other national audit offices should emulate and also made several constructive comments for GAO's consideration.[12]

With regard to Mr. Ghoshroy's request to have the disputed report addressed by our independent peer review team, it would have been wholly inappropriate to include a 2002 report in a review of GAO's 2004 work. Furthermore, as was the case with Mr. Ghoshroy's assertions and opinions regarding fraud and false claims, his related request reflects a misunderstanding of the nature, purpose and scope of a peer review conducted in accordance with Generally Accepted Government Auditing Standards.

Finally, I would like to note that Mr. Ghoshroy's use of GAO's letterhead to convey his personal views, is directly contrary to GAO's policies and professional ethical standards. This was especially inappropriate since Mr. Ghoshroy was on an unpaid leave of absence when he sent his December 19, 2005 letter and he is still on such leave. While Mr. Ghoshroy is entitled to his views and to share these views with you and other members of Congress, he should do so in a way that does not violate GAO's policies or imply an official sanction to his opinions and views. While we plan no action in this specific instance, we intend to remind him that like all employees he must comply with GAO's policies and procedures.

In closing, I believe that this letter makes clear that we have carefully addressed all assertions by Mr. Ghoshroy and that we have satisfactorily responded to all the key issues he has raised. We have confidence in the integrity of our people and in the reliability of our work, but acknowledge that communication on this particular engagement should have been better. We have taken several actions to help ensure these type of communication gaps do not happen again.

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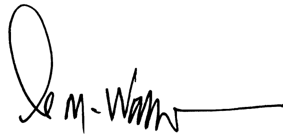
[11] The missile defense engagement was not included in the sample because (1) it involved classified material that an international team could not access and (2) it was conducted well outside the time period sampled.

[12] International Peer Review of the Performance Audit Practice of the United States Government Accountability Office, April 2005

As previously noted, we have expended significant time and taxpayer resources in connection with this over four year old report during the past several years, including three internal reviews. As you know, this is only one of several thousand GAO reports and other products issued during the past four years. Therefore, I would respectfully suggest that we have done enough on this matter and we need to move forward.

We look forward to continuing to work with you on the full range of pressing issues facing the Congress and the American people. Please contact me at (202) 512-5500 if you would like to discuss this matter further.

Sincerely,



David M. Walker
Comptroller General
of the United States

Attachments

cc: The Honorable John Warner, Chairman
Committee on Armed Services, United States Senate
The Honorable Carl Levin, Ranking Minority Member
Committee on Armed Services, United States Senate
The Honorable Susan M. Collins, Chair
Committee on Homeland Security and Governmental Affairs
The Honorable Joseph I. Lieberman, Ranking Minority Member
Committee on Homeland Security and Governmental Affairs
The Honorable George V. Voinovich, Chairman
Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia
The Honorable Daniel K. Akaka, Ranking Minority Member
Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia
The Honorable Wayne Allard, Chairman
Subcommittee on Legislative Branch, Committee on Appropriations, United States Senate
The Honorable Richard J. Durbin, Ranking Minority Member
Subcommittee on Legislative Branch, Committee on Appropriations United States Senate
The Honorable Jerry Lewis, Chairman
Committee on Appropriations, House of Representatives
The Honorable David R. Obey, Ranking Minority Member
Committee on Appropriations, House of Representatives
The Honorable Duncan Hunter, Chairman
Committee on Armed Services, House of Representatives
The Honorable Ike Skelton, Ranking Minority Member
Committee on Armed Services, House of Representatives
The Honorable Tom Davis, Chairman
Committee on Government Reform
The Honorable Henry Waxman, Ranking Minority Member
Committee on Government Reform
Mr. Subrata Ghoshroy