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Analysis of Disclosures, Agency Investigation and Report, Whistleblower Comments, and Comments of the Special Counsel

Summary of OSC File No. DI-00-1499

The information in this case was disclosed by Clarence Daniels, a Contract Specialist in the Program Executive Office, Tactical Missiles, Multiple Launch Rocket System (MLRS) Division, Aviation and Missile Life Cycle Command Management (AMCOM), Redstone Arsenal, Huntsville, Alabama. At the time of his disclosure, Mr. Daniels, who consented to the release of his name, had approximately 26 years of experience as a contract specialist with AMCOM. Mr. Daniels alleged that government employees assigned to monitor and oversee the government's MLRS M270 and M270A1 contracts with Lockheed Martin Missile and Fire Control (Lockheed Martin), Dallas, Texas, allowed the contractor to engage in improper contracting practices.[1] He alleged that these contracting improprieties violated acquisition regulations, resulted in significant monetary loss to the government, and created a substantial and specific danger to public safety.

In 1989, the Army entered into a multi-million dollar procurement contract with Lockheed Martin to purchase MLRS M270 launchers and, later, M270A1 launchers. Before November 1997, Mr. Daniels was one of the contract specialists who worked in what was then designated "Section A" of the Acquisition Office. Mr. Daniels and other Section A contract specialists negotiated and administered the production portion of the MLRS contract designated as Low Rate Production Contract DAAH01-98-C-0138. Mr. Daniels advised that the production contract was a fixed-price contract.[2] A second portion of the contract, the Industrial Engineering Services (IES) contract, DAAH01-98-C-0157, was handled by contract specialists in Section B of the Acquisition Office. Under the IES contract government employees assigned to monitor and oversee the government's MLRS M270 and M270A1 contracts with Lockheed Martin Missile and Fire Control (Lockheed Martin), provided for payment on a cost-type basis.[3]

In November 1997, Sections A and B of the Acquisition Office were consolidated into one unit. Thereafter, Mr. Daniels worked on the engineering services portion of the contract, including approximately six months as the contracting officer. In October 2000, Mr. Daniels was transferred to a different contract. Although he was no longer assigned to the MLRS contract, he

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[1]The contract describes the MLRS as a "non-nuclear, all-weather, indirect area fire weapon system" that "provides a high rate of fire, as well as a high volume of fire, and is adaptable to future munitions technology." It is capable of loading and firing as many as 12 surface-to-surface artillery rockets or missiles. The M270A1 is an upgraded version of the M270 Launcher.

[2]Fixed-price contracts, as the term suggests, provide for a firm price. Thus, under this type of contract, the contractor absorbs any unanticipated costs that may arise during performance.

[3]A cost-type contract allows a contractor to be reimbursed on the basis of costs incurred, provided that the contractor puts forth its "best efforts."

continued to review documents associated with the contract and provided advice and assistance to the contracting officer, Colleen Rodriguez, who worked in the same office as Mr. Daniels. In addition, due to Mr. Daniels' years of experience on the contract, he assisted the Defense Contract Management Agency (DCMA) auditors and U.S. Army Criminal Investigation Command investigators with the review of various aspects of the MLRS acquisition contracts.

As set forth in detail in the Army's report, the Army investigation partially substantiated Mr. Daniels' allegations. Specifically, the investigation found: 1) that Lockheed Martin mischaracterized costs incurred in the development of the Value Engineering Change Proposals as reimbursable costs under Engineer Change Proposals, 2) the Army failed to assert property rights over the Reduced Range Practice Rocket and the Low Cost Reduced Range Practice Rocket as required by federal regulation, 3) Lockheed Martin failed to provide a Safety Assessment Report required under the contract resulting in additional costs to the government for a review and safety assessment, and 4) that appropriated funds were used to bring the MLRS launchers into compliance when Lockheed Martin should have borne that cost. The Army is in the process of seeking reimbursement from Lockheed Martin for the additional costs of the Safety Assessment Report and for the cost of bringing the launchers into compliance. The Army is also in the process of clarifying and enforcing its property rights regarding the Reduced Range Practice Rocket and the Low Cost Reduced Range Practice Rocket.

The Whistleblower's Disclosures and the Response of the Department of the Army

The Secretary of the Army delegated the investigation of Mr. Daniels' allegations and authority to sign the report to Former Assistant Secretary of the Army (Manpower and Reserve Affairs), Ronald J. James. The report provides background information on the MLRS system and its development through a cooperative agreement initiated in 1979 among the United States, France, Germany, and Italy.

In brief, the report describes the MLRS as a rocket artillery system which fires surface-to-surface rockets and ballistic and semi-ballistic missiles. The MLRS launcher is mounted on the chassis of a Bradley tank and loaded with 12 rockets. Generally, the launcher receives its target data from a command post through the on-board fire control computer. The report explains that the fire control computer integrates the vehicle and rocket launching operations and allows for both manual and automatic firing. The MLRS has been used to provide combat capability supporting both Operation Enduring Freedom and Operation Iraqi Freedom.

Typically, AMCOM uses both firm-fixed-price (FFP) production contracts and one or more concurrent cost-reimbursement Industrial Engineering Services contracts (IES) for the procurement of weapons systems. The FFP contract is used for the delivery of system end-items while the IES contracts are used to solve technical problems in production and to make adjustments or improvements to the end-item produced. In this case, the Army awarded a five-year FFP contract to Lockheed Martin for production of MLRS M270 rocket launchers. Companion IES contracts were also in place or were awarded to Lockheed Martin.

When the Army upgraded the M270 launcher to the M270A1 in the early 1990s, Lockheed Martin received two research and development contracts, one for the Fire Control System and the other to improve the mechanical system of the launcher. Lockheed Martin ultimately received the production contract for the M270A1 launcher as well as two companion IES contracts and in December 2000, received an FFP production contract for 66 M27A1 launchers.

AMCOM is responsible for the management of the Army's aviation and missile acquisition programs, including the MLRS. Within AMCOM, the report states, there are two offices responsible for the development and production of the MLRS: 1) the MLRS Project Office, which manages the MLRS launchers, rockets and missiles, and 2) the Acquisition Center which includes divisions that provide contracting and acquisition support to the MLRS Project Office as well as other AMCOM project offices.

When Mr. Daniels filed these allegations, he was a contract specialist in the Acquisition Center. He continues to work in that position. Additionally, the report notes that according to the organizational hierarchy, during the time relevant to the allegations, the MLRS Project Manager supervised the MLRS Project Office and reported to the AMCOM Program Executive Office for Missiles and Space (PEO MS). The PEO MS reported to the Department of the Army Headquarters, and the Director of Acquisition Center reported to the AMCOM Commander.

Conduct of the Investigation

The Army's Office of the General Counsel forwarded the Special Counsel's request for investigation to the Army Materiel Command (AMC) Office of Command Counsel for investigation. AMC, in turn, referred the matter to the AMCOM Legal Office. The report explains the procedural history of this case noting that in September 2003, the U.S. Criminal Investigation Command (CID) agreed to investigate Mr. Daniels' allegations as possible procurement fraud. CID requested that AMCOM hold its investigation in abeyance until CID's criminal investigation was completed.

The deployment of a number of CID investigators and CID's investigation into a major fraud case in Iraq slowed the course of the investigation into Mr. Daniels' allegations. CID did not complete its investigation until November 30, 2007. CID ultimately substantiated a portion of allegation number 3 finding that Lockheed Martin had violated criminal statutes prohibiting false claims and false statements. The U.S. Attorney for the Northern District of Alabama declined prosecution, noting prosecution was barred by the statute of limitations.

Upon completion of CID's investigation AMCOM began its investigation into the allegations. AMCOM's Legal Office considered whether administrative or remedial action was necessary. The investigation also considered whether a review of AMCOM's business practices and procedures was necessary. The Army provided OSC with its report on Allegations, 2, 5 and 6 on July 21, 2008. The AMCOM Legal Office determined that additional investigation into Allegations 1, 3, and 4 was warranted. Toward that end, an Investigating Officer was appointed under the provisions of AR 15-6 to conduct the required investigation. The Army provided OSC

with its final report on January 5, 2009. As stated in the report, AMCOM's Legal Office will participate in executing corrective actions and recommendations. A summary of Mr. Daniels' allegations and the Department of the Army's report follows.

Allegation No. 1 Unauthorized Technical Direction Letters. Mr. Daniels alleged that he learned during a contract negotiation session with Lockheed Martin in 1998 that certain services already included in the production contract, were charged under the engineering services contract as well, amounting to double billing. According to Mr. Daniels, it appeared that whenever Lockheed Martin encountered difficulty meeting a term under the firm-fixed-price production contract and, accrued additional expenses, the Program Office permitted Lockheed Martin to charge these expenses to the cost-type IES contract, thereby reimbursing Lockheed Martin for a cost which, according to Mr. Daniels, the company was responsible for under the FFP contract.[4]

Mr. Daniels explained that one of the primary means used by the Program Office to improperly grant Lockheed Martin additional funding was through the issuance of unauthorized Technical Direction Letters (TDLs). Mr. Daniels explained that the purpose of a TDL is to outline in greater detail the technical work to be performed under the contract. Mr. Daniels stated that, instead, the Program Office issued several TDLs under the IES contract for production-related tasks already included in the price of the production contract. By issuing the TDLs in this manner, the Program Office improperly authorized Lockheed Martin to be paid twice for the production tasks.

Similarly, Mr. Daniels discovered that the Program Office approved certain TDLs for research and development-related tasks, which the government had already funded under the M270A1 research and development contracts: Engineering and Manufacturing Development Contracts DAAH01-92-C-0432 (IFCS EMD) and DAAH01-95-C-0329 (ILMS EMD). Mr. Daniels advised that the research and development contracts were initially cost-type contracts. However, because Lockheed Martin incurred too many expenses and performed poorly under these contracts, the government eventually imposed a funding cap. Thus, Mr. Daniels alleged that, by charging the research and development work to the engineering services contract via TDLs, the Program Office was attempting to circumvent the funding cap on the contractor's research and development services.

According to Mr. Daniels, not only did these improper TDLs constitute double billing, but many of them fell outside of the scope of the IES contract under which they were issued. Mr. Daniels maintained that the IES contract expressly excluded production-related tasks, research and development tasks, and any other tasks already included in other contracts.

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[4]Mr. Daniels explained the relationship between the MLRS Program Office and the Acquisition Office as follows: the Program Office ascertains the military's launcher needs and requirements from officers in the field, communicates these requirements to the Acquisition Office, and provides the funding to procure the launchers; the Acquisition Office, in turn, procures the launchers from the contractor and ensures that the terms of the contract are met. The Program Office is also commonly referred to as "the Project Manager's Office."

Mr. Daniels first realized that the TDLs were outside the scope of the contract when the Program Office submitted several of them to the Acquisition Office for approval. Mr. Daniels stated that, at that time, he personally rejected several of the TDLs on the grounds that they were out-of-scope. Later, when reviewing documents associated with the contract, Mr. Daniels discovered that, after this occurred, the Program Office continued to authorize TDLs, but stopped seeking approval from the Acquisition Office. Mr. Daniels stated that he informed his then-supervisor, Kathy James, former Chief, MLRS Contracting Division, about what he had uncovered. She failed, however, to report the problem or take any other action to remedy the situation.

Mr. Daniels stated that the TDLs improperly issued under the engineering services contract for production work and research and development work include, among others, TDL TR-99-001A (revision B), TDL LM-98-03, TDL IL-99-01, TDL PT-P-99-020, TDL LO-99-05. Mr. Daniels advised that these improper TDLs were signed by four individuals in the Program Office, including Colonel William Taylor, former MLRS Project Manager. Mr. Daniels estimated that these TDLs provided Lockheed Martin over $2 million in additional, unauthorized funding.

Response of the Department of the Army to Allegation No. 1. The Army broke down Mr. Daniels' allegation into two separate issues. The discussion and review of these issues is set forth in the report as allegations 1a and 1b. The investigation did not substantiate the allegations.

Allegation 1a. The Army reviewed the allegation that whenever Lockheed Martin encountered a difficulty or incurred an unanticipated expense in meeting the production of the MLRS under the FFP contract, the Project Office would issue a TDL against a related cost-type IES contract. Operating in this manner, Mr. Daniels alleged, allowed Lockheed Martin to secure payment from the IES contract for work that had already been performed and paid for under the FFP contract.

At the outset, the report notes that Mr. Daniels was correct in his assertion that IES contracts expressly prohibit the duplication of work covered by other government contracts. As Mr. Daniels did not specify which TDLs were at issue in Allegation No. 1, the review of this allegation by AMCOM's Legal Office included an analysis of each TDL transmitted by OSC with the referral letter to the Army as well as the TDLs cited by OSC in the referral letter. The investigation reviewed each TDL to determine whether the work set out in the TDL was within the scope of the applicable IES contract, Contract No. DAAH01-98-C-0157, and whether the TDL duplicated work already included in the performance of the production contract, Contract No. DAAH01-98-C-0138.

The review and analysis of the TDLs is presented in detail in the report. The Army concluded that in each case the evidence indicated that the work: 1) was within the scope of the appropriate IES contract Statement of Work, and 2) was not within the scope of the MLRS FFP production contract and, thus, did not constitute a duplication of the work of the IES contract. The Army also concluded that there was no evidence that Lockheed Martin was paid twice, under the IES and the FFP contract for the same work. Rather, each TDL was issued in response

to a specific technical issue regarding the production of the MLRS launcher and Lockheed Martin was paid once under cost-type IES contracts for the work authorized by the TDLs.

With respect to the process, the report explains that there is no law, rule or regulation which governs the substantive or procedural aspects of TDLs through their initiation, review, approval or issuance. Additionally, the report notes that during the time period relevant to this investigation there was no requirement that a contracting officer review or approve a TDL. Nevertheless, through the process in use at the time, the TDLs were subjected to several layers of review in the MLRS Project Office and approved by the MLRS Project Manager.

The report states that Mr. Daniels objected to two TDLs: the first was forwarded for legal review and later approved, the latter TDL was withdrawn. The report confirms that the Acquisition Center was omitted from the TDL process for a period of time. However, because at the time there was no requirement that a contracting officer or the Acquisition Center review or approve the contracts, the Army was unable to conclude that the omission of the Acquisition Center from the process constituted improper conduct.

The investigators were unable to substantiate the allegation that Mr. Daniels had reported his allegations of contract improprieties to his supervisor Ms. James, in part because Ms. James has since retired. Investigators were unable to locate her; thus, it is unclear whether she reported the problem to AMCOM or took any action in response to Mr. Daniels' concerns. The investigation was unable to confirm any report of possible irregularities with TDLs. Moreover, the report reiterates that because there was no legal or regulatory requirement that a contracting officer or the Acquisition Center review the TDLs and the TDLs at issue in this case do not appear to be erroneous, irregular or inappropriate, Ms. James' apparent failure to report Mr. Daniels' allegations did not constitute a breach of duty on her part.

The report notes that in 2001, out of an abundance of caution, AMCOM implemented a policy which required that a contracting officer review TDLs for the MLRS Engineering Services. Thus, all TDLs issued against contract No. DAAH01-C-01-0141, one of the contracts at issue in this case, have been reviewed by the Acquisition Center. The report points out that this policy continues in effect today.

Allegation 1b. The evidence obtained through the AMCOM Legal Review and the AR 15-6 investigation also determined that the tasks encompassed by the TDLs were not within the scope of work of the research and development contract, which was a cost-capped contract. In addition, the TDLs were not within the research and development contract, Contract No. DAAH01-95-C-0329, which, contrary to Mr. Daniels' understanding, was not capped. Given the review and evidence gathered, the report states that the allegation that AMCOM issued the TDLs in order to assist Lockheed Martin avoid the cost cap imposed by the research and development contract, or that AMCOM intentionally overlooked double-billing by Lockheed Martin is unfounded. The report finds that the available evidence shows that Lockheed Martin was paid once pursuant to a cost-type IES contract for work specifically authorized by the TDL and does not support an allegation of either double billing or duplicative work.

Allegation No. 2 Reimbursement for Voluntary Value Engineering Concepts. Mr. Daniels alleged that the Program Office permitted Lockheed Martin to charge the government for voluntary value engineering costs under the Reduced Range Practice Rocket (RRPR) and the Low Cost Reduced Range Practice Rocket (LCRRPR) IES contracts. Mr. Daniels explained that the RRPR and LCRRPR were developed, solely at government expense, under IES contracts DAAH01-92-C0243, DAAH01-96-C-0295, DAAH01-98-C-0157 and DAAH01-C01-0141. These contracts did not authorize Lockheed Martin to charge the government for any additional costs incurred for Value Engineering Change Proposals (VECPs) (also known as "value engineering concepts").[5] Rather, the contracts provided that any value engineering costs incurred by the contractor would be strictly voluntary, and, therefore, would be borne by the contractor, pursuant to section 52.248-1 of the Federal Acquisition Regulations (FAR).

Mr. Daniels contended that, despite the prohibition against VECP reimbursement, Lockheed Martin charged the government for VECPs by mischaracterizing them as Engineering Change Proposals (ECPs), which are reimbursable under the contract. Mr. Daniels alleged that the Program Office has reimbursed Lockheed Martin for unauthorized VECPs totaling over $33 million. He alleged that the contract provisions under which these costs were improperly charged include, but are not limited to, the following: modification P00241 to contract DAAH01-89-C-0336; TDL number TR-99-001A, Revision B to IES contract DAAH01-98-C-0157 (in the amount of $85,460.10); RRPR VECP Nos. MI-C1450, MI-C-1658V, MI-C1397 and MI-C1352R1, and LCRRPR ECP No. MI-M9041.

Mr. Daniels also alleged that, pursuant to Part 27 of the FAR and sections 227.7103 and 252.227-7013 of the Defense Federal Acquisition Regulations (DFARS), the government retains "unlimited rights" to these value engineering concepts, as they constitute proprietary information that was paid for exclusively with government funds. Nevertheless, Mr. Daniels alleged that the government did not acquire any proprietary rights to the design concepts and technical data contained therein. Mr. Daniels alleged that, instead, the Program Office repeatedly allowed Lockheed Martin to assert that the RRPR and LCRRPR technical data packages–with the exception of the warhead technical data package, which is classified–were developed at private expense. As a result, Lockheed Martin demanded and received from the government a production royalty payment of $5000 per rocket pod delivered. By way of example, Mr. Daniels alleged that, in January 1996, the government approved future royalty payments to Lockheed Martin of $393,400 via modification P00260 to contract DAAH01-89-C-0336. Mr. Daniels alleged that other documents approved by the Program Office wherein Lockheed Martin improperly asserted proprietary rights included, among others: modification P00241 to contract DAAH01-89-C-0336, ECPs MI-C1973FR0A0 and MI-M9041, and specifications MIS-35095/19 and MIS-35094/19 to contract DAAH01-C-01-0141.

Response of the Department of the Army to Allegation No. 2. The Army broke down

[5]Mr. Daniels explains that "value engineering concepts" are research concepts designed to save the government money by increasing efficiency and reducing the overall costs of production.

Mr. Daniels' allegation into two separate issues. The discussion and review of these issues is set forth in the report as allegations 2a and 2b.

Allegation 2a. After an extensive review of the contracts and relevant modifications, the Army concluded that allegation 2a was unsubstantiated. The AMCOM Legal Office reviewed Mr. Daniels' assertion that the RRPR was developed under an IES contract. Lockheed Martin began developing the RRPR in 1989 and first produced it in 1992 and 1993. The report states that Mr. Daniels identified four IES contracts but that only one of those contracts was in effect during that time period. In addition, the legal review did not find any evidence that the RRPR was developed under that contract. Based on the information gathered in the investigation and review of this matter, the Army concluded that AMCOM did not develop the RRPR under an IES contract and that the government did not pay Lockheed Martin under two different contracts for the development of the RRPR.

With respect to the LCRRPR, the report states that it was not developed as a VECP, but rather, solely at the Army's expense under TDL TD 99-001 against IES Contract No. DAAH01-98-C-0157. The report identifies seven payments to Lockheed Martin which were reviewed in the investigation. The Army provided copies of these modifications with its report, concluding in each case that the payments were appropriate and provides an explanation for the payments. The report concluded that the Army did not reimburse Lockheed Martin for the LCRRPR ECP because the company was compensated for that ECP under the IES contract.

Allegation 2b. The Army partially substantiated the allegation that the RRPR Nose Cap drawing and the MIS-35095/19, as applied to the RRPR, modified by the ECP, and to the LCRRPR, bear "Limited Rights" and "Restricted Rights" markings, respectively.

The report notes that due to the passage of time, the government has forfeited the right to challenge any potential error regarding the RRPR Nose Cap marking. However, AMCOM can still challenge the Missile specification as applied to the RRPR and the LCRRPR. AMCOM intends to ask Lockheed Martin to justify the "Restricted Rights" markings associated with the applications of the MIS-35095/19. The report states that AMCOM is taking steps to enforce the government's contractual grant of Government Purpose License Rights.

Allegation No. 3 Acceptance of Nonconforming M270A1 Launchers. Mr. Daniels alleged that, under production contract DAAH01-98-C-0138, the Program Office accepted, paid for, and deployed over fifty M270A1 launchers that did not satisfy several of the contract's performance specifications. Among the unmet performance specifications were several critical safety requirements. Mr. Daniels explained that delivery of the first M270A1 launchers began in 2000. When Lockheed Martin refused to perform a safety assessment of the missiles at that time, as required under the contract, the government hired an independent contractor to perform this task. The independent contractor issued a Safety Assessment Report in 2000, finding that the launchers did not meet several of the critical safety-related performance specifications set forth in the contract. The Safety Assessment Report was reviewed by both the Program Office, at the time headed by Colonel William Taylor, and the Safety Office, which advised the Program

Office on safety matters. In addition, several members of the Program Office, including Colonel Taylor, attended a briefing conducted by Lockheed Martin in November 2000, at which time Lockheed Martin informed the Program Office of critical safety deficiencies they had discovered in the launchers, including "uncommanded launcher cage movement."[6] Mr. Daniels stated that Lockheed Martin representatives were so concerned about these safety issues that they proposed halting delivery of the launchers. Mr. Daniels related that, notwithstanding the Lockheed Martin's reservations, the Program Office authorized the contractor to resume delivery of the unsafe M270A1 launchers.

According to Mr. Daniels, the Program Office did not notify the Acquisition Office that the launchers did not meet the requirements of the contract until approximately two years later. In fact, he claimed that Contracting Officer Colleen Rodriguez, the primary official responsible for ensuring that all terms of the contract were satisfied and who had the authority to stop acceptance of the launchers, was not informed of the existence of the independent Safety Assessment Report, nor of its findings, until she attended a meeting on April 3, 2002, where the report was discussed.

Mr. Daniels stated that, upon learning of the launchers' safety defects, Ms. Rodriguez promptly advised the Program Office that the government should seek corrective action prior to accepting any more launchers. Contrary to her advice, however, the Program Office did not halt delivery of new launchers at that time. Instead, the Program Office decided to establish an independent government team to perform a Safety Risk Reduction Effort in order to identify the specific safety hazard reduction needs of the launcher. Based on this assessment, the Program Office and Lockheed Martin developed and agreed to a "Get-Well Plan" intended to correct the identified safety hazards over an extended period of time, in an effort to avoid delaying the delivery schedule. According to Mr. Daniels, the Safety Office concurred with this approach, and granted a "conditional safety release" of the launchers. The conditional release allowed the government to accept the launchers, contingent upon Lockheed Martin resolving the deficiencies within two years. Mr. Daniels advised that several launchers had already been accepted under this agreement and had been deployed to the field.

Mr. Daniels related that, subsequent to implementation of the conditional agreement, Lockheed Martin presented the government with its own safety assessment in October 2002. The Lockheed Martin Safety Assessment reported safety deficiencies in the launchers that were deemed much more serious than those previously reported in the independent Safety Assessment Report. These hazards included some regarded as "catastrophic" by the Safety Office. The "catastrophic hazards" included "uncommanded launcher cage movement" and the inadvertent firing of missiles. In light of the new information, the Safety Office concluded that the M270A1

[6]According to Mr. Daniels, "uncommanded launcher cage movement" referred to a defect in the MLRS software, whereby the missile independently took aim, and possibly fired, at a target without being commanded to do so. Because the M270A1 reached its aim point and fired in a fraction of the time required by the M270, Mr. Daniels advised that, if a missile misfired during combat, soldiers would have very little time to escape its path.

launchers were not compliant with requirements set forth in Paragraph 3.2.10.2 of MIL-PRF-35500.

Based on the information contained in the Lockheed Martin Safety Assessment Report, Ms. Rodriguez instructed DCMA to halt acceptance and delivery of the launchers, by letter dated April 11, 2003. In correspondence of April 23, 2003, Deborah Williams, Administrative Contracting Officer, DCMA Lockheed Martin, Dallas, Texas, informed Lockheed Martin that DCMA would not accept any more launchers because the launchers did not meet the terms of the contract. Even though delivery was halted at this time, Mr. Daniels remained very concerned that over 50 launchers had already been accepted by the government prior to termination of delivery. Mr. Daniels advised that the government accepted these defective launchers without requiring any form of consideration to offset the launchers' defects.

Mr. Daniels contended that the government's acceptance of launchers known to be defective, from 2000 until April 2003, violated FAR section 46.407. This regulation provided that the government must "reject supplies or services not conforming in all respects to contract requirements." Mr. Daniels also contended that acceptance of the nonconforming launchers constituted a gross waste of funds because the defective launchers were useless to the military unless and until the government spent more money to render them safe and compliant. Had the government rejected the launchers immediately upon learning of the safety hazards, Lockheed Martin would have remained responsible for remedying the defects under the contract.

Allegation No. 4 Safety Risks Posed by Fielded M270A1 Launchers. Mr. Daniels expressed concern that many of these unsafe launchers had already been deployed to several locations, including Iraq and Kuwait. He contended that the launchers posed a substantial and specific danger to the safety of the soldiers firing, or standing in close proximity to them. Although the military had already attempted to minimize the safety risk by implementing certain strict procedural steps (known as "the M270A1 Fielding Operating Restrictions") that soldiers must follow when operating the launchers, Mr. Daniels maintained that these steps were impractical and doubted such precautions were sufficient to mitigate against the potentially catastrophic dangers posed by the launchers' safety deficiencies. Mr. Daniels also contended that the Army's reliance on these Fielding Operating Restrictions violated Military Standard 882 (MIL-STD-882) "System Safety Requirements." Under MIL-STD-882, the military must rely on design features, rather than operating procedures (such as the M270A1 Fielding Operating Restrictions), in order to achieve an adequate level of safety.

Response of the Department of the Army To Allegations 3 and 4. The Army's report addressed these allegations together due to the inherent relation of the two.

Allegations 3a and 4a. The investigation did not substantiate the allegation that the government accepted and deployed launchers which were unsafe and did not conform to safety-related performance specification MIL-PRF-35500. However, the report chronicles the safety concerns identified with the MLRS M270A1 launcher and the process through which those safety issues were ultimately corrected.

After its review and investigation the Army concluded that the available evidence supported a finding that the safety issues regarding the M270A1 were identified and analyzed through the Safety Risk Reduction Effort. The Safety Risk Reduction Effort was established in May 2001 in response to the Army's continuing dissatisfaction with Lockheed Martin's attempts to isolate the cause of the uncommanded cage movement and with Lockheed Martin's delay in submitting a compliant Safety Assessment Report. The Safety Risk Reduction Effort team, comprised of both government experts and support contractors, was charged with conducting a detailed evaluation of the M270A1 launcher's potential safety risks and to propose corrective action. The AMCOM Safety Office concurred with the establishment of the Safety Risk Reduction Effort.

The Army states that the Safety Risk Reduction Effort conducted significant research investigation and testing. Its final report identifying launcher design deficiencies affecting safety was issued in January 2002. The AMCOM Safety Office issued a Safety Assessment/Safety and Health Data Sheet (S&HDS) on the M270A1 drawing on the findings of the Safety Risk Reduction Effort report. The Safety Office concluded that the launcher was safe subject to two changes in the Fire Control System and six hardware and software changes to the launcher control system.

The Army reports that the safety issues were corrected through the "Get Well Plan" developed for the launchers and included in the S&HDS. The two changes to the FCS and five of the six changes to the launcher control system form the basis for the Army's "Get Well Plan" which identified seven fixes and safety-related improvements recommended by the Safety Risk Reduction Effort: 1) requiring a double tap so that the user is required to take two deliberate actions, instead of one in order to activate the launcher cage at tactical speed, 2) defaulting to maintenance speed, 3) correcting the launcher movement/control, i.e., the single-point failure and uncommanded cage movement, 4) adding boom control switch kill capabilities, 4) eliminating stale message and hanging latent commands, 5) implementing a "timeout" of the last command in buffer, and 6) eliminating launcher cage oscillation. In its report to OSC, the Army presents a comprehensive description of these safety issues as well as a chart identifying the recommended safety improvements and the dates of the corrections and retrofitting.

These safety corrections were implemented prior to the fielding and deployment of the launchers for operational use in late 2003. The report notes in September 2002, after the launchers had been released through a "Conditional Materiel Release" and a "Training Conditional Release," for the limited purposes of field testing and training, the launchers conformed to all safety-related contract performance requirements for MIL-PRF-35500, and were deemed safe for use by soldiers.

Allegation 3b. The investigation substantiated the allegation that Lockheed Martin failed to provide an acceptable Safety Assessment Report for the launcher as required by the contract. As a result of this failure, AMCOM was required to hire and pay an independent contractor to write a Safety Assessment Report. Under the contract, Lockheed Martin was required to prepare

and deliver a Safety Assessment Report for the M270A1 no later than March 21, 2001, within 270 days of the contract award. In order to fully prepare the Safety Assessment Report, Lockheed Martin would have had to undertake analyses of the safety program, safety assessment, and hazard issues. Lockheed Martin notified AMCOM that in negotiating the contract, it had not sufficiently priced the manhours necessary to prepare the Safety Assessment Report and thus, had not adequately estimated the cost of preparing it. Lockheed Martin informed AMCOM that the Safety Assessment Report would not be submitted by the March 21, 2001, deadline.

In order to assess and evaluate the safety issues presented by the M270A1 launcher, AMCOM needed a comprehensive Safety Assessment Report. When Lockheed Martin failed to produce the expected report, AMCOM supported the Safety Risk Reduction Effort team whose mission was, as described above, to conduct a comprehensive evaluation of the launcher's potential safety problems and propose corrective action. AMCOM paid approximately $1,000,000 for the services of independent contractors who worked on the Safety Risk Reduction Effort. The report notes that the independent contractor participated in this process pursuant to an existing services contract, not a new contract.

The report states that after a number of revisions and resubmission, Lockheed Martin ultimately provided a Safety Assessment Report which was accepted by the government on June 13, 2003. Shortly thereafter, in August 2003, James Snyder, Chief, MLRS Services Division, AMCOM Acquisition Center drafted a demand letter seeking $1,600,000, in reimbursement from Lockheed Martin, $1,000,000 of which was for the costs associated with the government's expenditure of appropriated funds to pay the independent contractor for the Safety Risk Reduction Effort safety analysis and assessment. AMCOM deferred presenting Lockheed Martin with its demand due to the receipt of OSC's referral and request for investigation, and the CID investigation which quickly ensued. Upon completion of the CID investigation in January 2008, the demand letter was sent to Lockheed Martin. As of January 2009, Lockheed Martin had still not formally responded to the demand. Thus, while Mr. Daniels is correct that the government was required to expend additional appropriated funds because of Lockheed Martin's failure to provide a Safety Assessment Report under the contract, the Army states the government is actively pursuing reimbursement for that expenditure.

Allegation 3c. Mr. Daniels alleged that the costs of bringing the launchers into compliance should have been borne by Lockheed Martin, but instead, additional appropriated funds were used to cover that expense. The investigation substantiated the allegation. The report explained that Lockheed Martin bore the responsibility for producing and delivering to the government M27A01 launchers free of single-point failures which could result in critical safety hazards or mishaps.

Thereafter, the Safety Risk Reduction Effort team identified the launcher movement/control deficiency as the most likely cause of the uncommanded cage movement problem. This deficiency was identified by the Safety Risk Reduction Effort as a single-point failure, rendering the launcher nonconforming with the safety-related performance specifications in MIL-PRF-35500, incorporated in the FFP contract. The AMCOM Acquisition Center, unaware that the

launcher deficiency constituted a single-point failure, paid Lockheed Martin an estimated $600,000 to correct the deficiency. However, Lockheed Martin was already obligated, and had been paid, under the terms of the contract to provide the government with M27A01 launchers devoid of single-point failures. Thus, the payment of $600,000 was a double payment and was in error.

The Army concluded that the double payment was the result of "persistently poor communications" between the MLRS Project Office and the AMCOM Acquisition Center. The double payment had already been made to Lockheed Martin when the Acquisition Center became fully aware of the facts and circumstances surrounding the correction of the deficiency in the launcher movement/control mechanism. As stated above, Mr. Snyder drafted a demand letter seeking reimbursement from Lockheed Martin in the amount of $1,600,000, $600,000 of which is recoupment for the mistaken double payment of appropriated funds to correct the deficiency. Mr. Snyder deferred sending the demand to Lockheed Martin because of the Army's receipt of the OSC referral and the ensuing CID investigation. Upon completion of the CID investigation, Mr. Snyder forwarded the demand for repayment to Lockheed Martin. As noted previously, Lockheed Martin's response to the government is still outstanding.

Allegation 4b. The investigation did not substantiate the allegation that the Army violated MIL-STD-882, System Requirements, by relying on "Field Operating Restrictions" to support the safety of the M27A01 launcher and its operators. The report explains that the launcher was approved for "Conditional Materiel Release" and "Training Materiel Release" in February 2002. Under these conditions, the launchers were released to troops for limited training and testing. Because of the safety issues identified with the launchers, the Safety Risk Reduction Effort report and the AMCOM Safety Assessment/Safety and Health Sheet recommended that the design changes be quickly implemented and that operating procedures be issued to ensure the safety of personnel who were testing or training on the launcher. Toward that end, the AMCOM Safety Office issued a safety bulletin mandating the use of the 3-meter rule. Under this rule, no personnel are permitted within a 3-meter safety zone of the launcher while it was in use. The report notes that this rule remains in effect.

Mr. Daniels alleged that the Field Operating Instructions, including the 3-meter rule, were insufficient to ensure the safety of the soldiers using the equipment. He maintained that instead of the limited-use operation, the M270A1 should not have been fielded for use by personnel until the safety and operating issues and the design deficiencies were fully resolved.

The report notes that while MIL-STD-882 states a preference for using design elements to reduce safety risks, it also states that there are other measures that are acceptable as part of a comprehensive approach to safety. The Army maintains that special training and procedures, such as the procedures in the AMCOM M270A1 Safety Bulletin, are acceptable. Moreover, in the case of the M270A1 launcher, the resolution of the safety issues included redesign, the addition of improved safety and warning devices, and adherence to safety operating measures such as the 3-meter rule. According to the Army, this combined approach has contributed to an outstanding safety record for personnel associated with the M27A01 launcher.

Allegation No. 5 Acceptance of Five M270A1 Launchers Lacking Fire Control Systems. Mr. Daniels alleged that Ms. Rodriguez, by letter dated October 15, 2002, accepted delivery of five M270A1 launchers, under Contract DAAH01-00-C-0109, from which the Fire Control System equipment had been removed, without accounting for the diminished value of the launchers and adjusting the price.[7] Mr. Daniels advised that each Fire Control System is worth approximately $1.5 million. The total cost of each launcher is approximately $3 million, thus, the Fire Control System accounts for approximately one-half of the launcher's value. Mr. Daniels asserted that the government derived no benefit from, nor received consideration for, accepting these incomplete launchers while Lockheed Martin benefited from the transaction by receiving full payment for five launchers while retaining $7.5 million worth of Fire Control System equipment. According to Mr. Daniels, Ms. Rodriguez accepted the incomplete launchers at the direction of Terrie Bramlett, a Project Manager in the Program Office.

Based on his review of inventory records, Mr. Daniels suspected that the government directed Lockheed Martin to install the five Fire Control Systems that were removed from these M270A1 launchers onto five other M270A1 launchers in the government inventory, from which the Fire Control Systems had also been improperly removed. He maintained that documents suggested that the Fire Control Systems that were removed from the launchers in inventory had been illegally transferred to five High Mobility Artillery Rocket System (HIMARS) launchers, which were covered by a different Lockheed Martin contract. According to Mr. Daniels, the incomplete M270A1 launchers that were in inventory were discovered during the Army's preparation for Operation Iraqi Freedom. As a result, the military had to quickly locate replacement parts before these five launchers could be deployed to Iraq. It appeared the Program Office's solution was to permit Lockheed Martin to remove five more Fire Control System components from other launchers scheduled for delivery, and then to accept the five stripped launchers at full price.

Response of the Department of the Army to Allegation No. 5. This allegation was not substantiated. The report explains that MLRS program was ultimately made whole in 2006 when it received five Fire Control Systems thereby replacing those transferred in 2001 for the HIMARs testing. The report acknowledges that the "round-about" nature of this transaction may allow some to question its propriety or the business judgment of those involved. However, after review of the transactions, the Army concluded that there was no violation of law, rule, or regulation, and that there was no abuse of authority by Army officials.

Allegation No. 6 Unauthorized Use of Warranty Spare Launcher Parts. Mr. Daniels alleged that Program Office personnel allowed Lockheed Martin to use "rotable warranty spares" the government purchased under M270 production contract DAAH01-94-C-A005 for unauthorized purposes, without requiring the contractor to provide due consideration.

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[7]Mr. Daniels explained that a launcher's FCS equipment consists of computer hardware and software that controls a launcher's ability to fire missiles.

Mr. Daniels explained that contract DAAH01-94-C-A005 included a warranty clause that required Lockheed Martin to acquire and store brand new spare launcher parts solely for the purpose of performing launcher repairs in order to meet the contract's performance specifications. He advised that the contract required Lockheed Martin to return all residual warranty spares to the government at the end of the warranty performance period. Mr. Daniels stated that, when the warranty performance period ended, approximately 40 of the warranty spares were returned by Lockheed Martin in used condition, even though the warranty had been invoked on only two occasions during performance of the contract, requiring only two launcher parts to be replaced. Mr. Daniels provided a spreadsheet he prepared, based on information obtained during an audit of the warranty spares conducted by Randy Castleberry, Quality Assurance Representative, which documented the used condition of each of the spare parts. As of the date of OSC's referral to the Army, Lockheed Martin had not accounted for the consumption of these warranty spares. Mr. Daniels estimated these launcher spares to be worth a combined total of approximately $3.5 million.

Mr. Daniels stated that IES Quarterly Progress Reports indicated that Lockheed Martin used several of the government's rotable warranty spares to repair several M270 launchers that were delivered to Foreign Military Sales customers. He explained that these Foreign Military Sales launchers had failed Production Acceptance Tests conducted at Red River Army Depot, Texas.[8] The launchers required replacement parts, yet the Foreign Military Sales customers had not purchased warranty coverage or rotable spares.[9] Mr. Daniels alleged that, consequently, Lockheed Martin used the rotable launcher spares that were purchased by the U.S. government to perform these repairs. He asserted that, to date, the Program Office has not required Lockheed Martin to reimburse nor provide any other form of consideration to the government for the unauthorized use of these launcher parts. He contended that the Program Office instructed Lockheed Martin to ship the DAAH01-94-C-A005 residual warranty spares to Kuwait "as is" to be used in support of the war effort. Because the Program Office did not require Lockheed Martin to account for the condition of all of the rotable spares before they were shipped to the field, Mr. Daniels feared that it is unlikely that Lockheed Martin would ever be held accountable for unauthorized use of the government's launcher spares.

Response of the Department of the Army to Allegation No. 6. The investigation did not substantiate this allegation. In order to reduce down time for launchers with defective components or in need of repair, the Army included a clause in the contract which required Lockheed Martin to maintain a rotatable pool of spare launcher parts. The review of Contract No. DAAH01-94-C-A005 and its 60 modifications conducted by AMCOM's Legal Office, determined that the spare parts were Lockheed Martin's property. They were procured at Lockheed Martin's expense and remained its property and in Lockheed Martin's inventory until

[8]According to Mr. Daniels, most launchers are sent to Red River Army Depot for final performance testing before being shipped to their ultimate destination.

[9]Mr. Daniels is well-versed in the terms of contract DAAH01-94-C-A005, as he was one of the contract's negotiators. He advises that the contract involved the sale of M270 launchers to both the U.S. military and certain foreign military customers, yet the U.S. military was the only customer that opted to purchase warranty coverage and spare launcher parts.

expiration of the warranty. The report identifies the relevant time frame as the warranty period applicable to the last launcher produced and delivered under the base contract. Upon expiration of the warranty, the inventory on hand was transferred to the government in "as is" condition. At that point, the spare launcher parts became government property and subject to government control. There was no contract requirement that Lockheed Martin maintain a list of spare parts or turn over a certain type or number of spare parts to the government. Rather, the government was to receive the balance of Lockheed Martin's inventory upon the expiration date.

The report acknowledges that the question of ownership of the spare parts is confusing. Indeed, the report notes that many personnel familiar with this contract had differing views as to the ownership of the spare parts. Nevertheless, the investigation did not reveal any violation of law, rule or regulation or any other impropriety.

Additional Issue Reviewed by the Army

During the investigation, Army investigators interviewed two employees who stated they felt pressure by those in their supervisory chain of command and from Lockheed Martin to minimize the MLRS safety problems. One of the employees felt he had not been selected for a position because of his participation in the Safety Risk Reduction Effort. The second employee also felt that he had suffered professionally because of comments he had made about the MLRS project. The Commanding General directed the investigators to review these concerns further.

After additional review of the available testimony the investigators concluded that the employees' view of the situation was colored by negative interactions they had with supervisors while working on this project. The report noted that both employees had moved to other positions and had been promoted. Moreover, they were credited with playing important roles in the identification and resolution of the safety deficiencies. Thus, investigators recommended against any further investigation. The Commander AMCOM, and the AMCOM Legal Office concurred with the recommendation.

Conclusion

In its conclusion, the Army writes that adherence to law, rule are regulation in its acquisition and procurement procedures is critical to the integrity of those procedures and to ensuring that the government receives the benefit of its investment. This is particularly true in a case such as this one involving weapons systems where the safety of soldiers is also a paramount concern. The Army states that its response to OSC referrals also affects the integrity of the acquisition system and that this referral, in particular, has reinforced the importance of the Army's core tenets.

The Army concluded by noting that the investigative process in this case, specifically the prolonged response time due to CID's criminal investigation and review, has caused the Army to reassess its procedure for investigating complex cases. While AMCOM did not want to interfere or contaminate a criminal investigation, delaying its investigation until CID concluded its review

left AMCOM with a more difficult investigatory task and a "cooled" evidentiary trail when investigating Mr. Daniels' allegations. For this reason, AMCOM is reconsidering its practice of deferring investigation in favor of a policy of parallel inquiry.

Finally, the referral has resulted in AMC and AMCOM evaluating how to improve communications between MLRS Project Office and the Acquisition Center. Through training and the application of lessons learned, AMCOM will, with AMC oversight, try to foster the coordination necessary to ensure personnel safety and best serve the interests of the Army.

The Whistleblower's Comments

Mr. Daniels submitted comprehensive comments, which are summarized only briefly here, on the Army's investigation and report. In those comments, Mr. Daniels voices his continuing concern about Lockheed Martin's contracting practices and the manner in which the MLRS contracts were managed. He describes instances where the government has settled contracting disputes with Lockheed Martin and states that more investigation is needed into the company's contract management.

Mr. Daniels takes exception to the report's findings and states that past and present management officials have not been held accountable for their intentional actions, for their acts of omission and the breaches of their duty to the government. He believes that officials' actions were intended to defraud the government in exchange for promotion, private gain or post-government employment with Lockheed Martin.

In addition, Mr. Daniels believes that questions remain regarding the scope of work in the IES contracts Statements of Work. He notes that the Department of Justice has entered into settlement agreements with Lockheed Martin where violations of the scope of a contract Statement of Work were in dispute. He also questions whether government personnel aided Lockheed Martin in its fraud and whether any government employees benefited from it. Mr. Daniels also asks if the Lockheed Martin fraud continues, what corrective measures the government has taken to prevent future contract fraud and theft, and whether any non-prosecution agreements exist between Lockheed Martin and the Department of Justice. Finally, Mr. Daniels commented that he does not believe the safety deficiencies with the MLRS launchers were satisfactorily managed. Mr. Daniels' comments, and the documents he provided, are included in their entirety for review.

The Supplemental Report of the Department of the Army

The Army provided a supplemental report on September 11, 2009. The supplemental report and enclosures are included in their entirety and only briefly summarized here.

The supplemental report was produced by Robert Parise, an attorney formerly with the Army's Office of General Counsel, and an expert on government contracting. In preparing for this inquiry, Mr. Parise reviewed the Army reports produced to date in this matter, supporting

documents, and Mr. Daniels' comments. He also interviewed Mr. Daniels on his allegations as well as his outstanding concerns regarding the Army's investigation, its findings and conclusions. After the interview, Mr. Parise also reviewed and considered additional documents provided by Mr. Daniels. The supplemental report did not alter the findings of the initial report. A brief summary of the supplemental report follows.

Allegation No. 1: Unauthorized Technical Direction Letters (TDLs). Mr. Daniels' alleged that certain TDLs intended to support the MLRS program were unauthorized and outside the scope of the Industrial Engineering Services (IES) contracts under which they were placed. Mr. Daniels' contended, instead, that the TDLs should have been under existing fixed-price production, or research and development contracts.

The supplemental report states that Mr. Daniels' objected to TDL TR 99-001 for a Low Cost Reduced Range Practice Rocket under the IES contract because he stated there was no government requirement for the rocket. The supplemental report continues explaining Mr. Daniels' belief that the Army had no obligation to update or maintain the technical data package for the Reduced Range Practice Rocket (RPRR) because it did not own the data. However, the supplemental report states that the TDL was issued to solve problems with the RRPR which the Army was using to support the MLRS training. It was in the best interests of the Army to acquire a more effective and less expensive training round regardless of ownership of the technical data package, and accomplishing that goal under the IES contract was "not legally objectionable."

The supplemental report also addresses the scope of the IES contract and whether the TDL fell outside that scope. After considering the information provided by the Army and Mr. Daniels, Mr. Parise noted that the determination of scope is largely a matter of judgment. In this case, Mr. Daniels disagrees with the determination made by Army officials. Nevertheless, the information provided by the Army provides a reasonable basis upon which to base a determination that the TDLs at issue were within the scope of the contract.

Documents supporting Mr. Daniels' assertions of mischarging by Lockheed Martin were also reviewed. The supplemental report explains the documents appear to reflect reports submitted by Lockheed Martin which track proposal status throughout the MLRS program and not actual charges. In addition, the supplemental report notes that audits into Lockheed Martin's cost charging practices had been conducted and a settlement agreement negotiated between the Army and the contractor. These allegations were reviewed by the Army Criminal Investigation Command and no finding of criminal activity was made. Mr. Daniels was unfamiliar with all of the information presented by the Army in its report on the audits and criminal investigation. He stated that he was unsure about the conclusion regarding criminal conduct because he did not know the context of the investigation.

Allegation No. 2: Reimbursement of Voluntary Value Engineering Concepts. Mr. Daniels alleged that Lockheed Martin conducted the RRPR effort under IES contract DAAH01-92-C-0243 and not under the '89 MLRS production contract. The documentary evidence showed that

Lockheed Martin developed the RRPR as an Independent Research and Development effort. The documents also establish that Lockheed Martin developed the RRPR as a voluntary VECP that Lockheed Martin submitted to the Army and was accepted under the '89 production contract. The supplemental report describes the documents reviewed and explains the process through which the RRPR was developed as a VECP. The documents identified by Mr. Daniels were not found to support his conclusion that the VECP was under the IES contract.

Under this process, the government negotiated with Lockheed Martin to acquire greater rights to the data. As a result of those negotiations, there was a contract modification under the '89 production contract which gave the government purpose rights for domestic manufacture of the MLRS. The supplemental report notes that by incorporating the VECP into contract 89-C-0336 the contract price decreased approximately $6 million. The Army also noted that despite the contract modification, Lockheed Martin had improperly marked some of the data. Army contracting officials are presently pursuing this issue with Lockheed Martin to enforce the government's rights and have the restrictive markings removed. Mr. Daniels acknowledged that there was no evidence of any improper payments to Lockheed Martin.

Allegations No. 3 and 4: Acceptance of Nonconforming M270A1 Launchers/Safety Risks Posed by Fielded Launchers. Mr. Daniels alleged that the Army accepted nonconforming MLRS M270A1 launchers which were defective and unsafe and deployed them into a combat zone. As noted in the initial report, the Army acknowledges that there were safety issues with the launchers and described the efforts and process of resolving those issues, including the Safety Risk Reduction Report, and the approval of conditional and training release. Mr. Daniels stated that he had not reviewed the documents produced by the Army regarding the resolution of the safety issues and was not familiar with the M270A1 Safety Assessment/Safety and Health Data Sheet report which had concluded that the safety issues had been fully resolved and the launchers were acceptable for full materiel release, nor was he aware of the status of the "get well plan" for the launchers.

The Army disputes the assertion that the launchers were deployed into a combat zone. Mr. Daniels provided documents which he maintained supported this allegation. After a review of the documents provided, the investigator concluded that the documents show the Army was aware of the safety issues and working with Lockheed Martin to correct them, but do not establish that the launchers were deployed. Additionally, Mr. Daniels relied on the statements of AMCOM's Safety Officer who expressed safety concerns in an e-mail dated October 4, 2002. However, during the interview of the Safety Officer by the Army in this investigation, he stated that the safety issues were resolved prior to the launchers being sent to the field. Significantly, he stated that the allegation that unsafe launchers were actually sent to the field was an "exaggeration of the facts."

Allegation No. 5: Acceptance of Five M270A1 Launchers Lacking Fire Control Systems. Mr. Daniels alleged that the Army paid Lockheed Martin for five Fire Control Systems that were not delivered. The supplemental report reviews the relevant documentation on this allegation including the Lockheed Martin shipping documents provided by Mr. Daniels. A review of the

documentation on this matter showed that the Army had an urgent need for Fire Control Systems for the HIMARS program and took five from MLRS systems to meet that need. When it was later discovered that the Fire Control Systems had not been replaced for the MLRS, the Army authorized Lockheed Martin to ship five Fire Control Systems to Red River for installation.

In October 2002, the Army authorized Lockheed Martin to "ship short" five launchers. i.e., without the Fire Control Systems, because they had been taken off the production line and shipped earlier. Thus, the investigation concluded that the Army received and paid for the correct number of launchers and Fire Control Systems; there was no overpayment to Lockheed. The investigation also concluded that Mr. Daniels reliance on the shipping documents was misplaced and that it is likely any annotations on the HIMARS documents identify the reason the shipments were made. The annotations, do not, however, reflect any deception. The supplemental report notes that the CID investigation into this allegation also concluded that Lockheed Martin delivered all the Fire Control Units required under the contract.

Allegation No. 6: Unauthorized Use of Warranty Spare Launcher Parts. Mr. Daniels alleged that Lockheed Martin's use of warranty spare launcher parts was not authorized under Contract DAAH01-94-C-A005, and that this resulted in the Army using used spare parts at the end of the warranty. He further alleged that Lockheed Martin used warranted spare parts to support Foreign Military Sales requirements even though those customers had not purchased a warranty under the contract.

The review of the documentation showed that the Army contracting officer was aware of Lockheed Martin's use of the warranted parts and the work was performed on systems that belonged to the Army. Moreover, the Army contracting officer was aware of the condition of the spares when they were transferred to the Army in 2003. For this reason, the supplemental Report states that the notice provision of the contract was waived and there was no improper use nor was the Army entitled to compensation for that use.

The investigation also concluded that there was no merit to Mr. Daniels' allegation that warranted spare parts were improperly used to support Foreign Military Sales. The supplemental report explains that the Army had the responsibility to ensure that MLRS shipped to its foreign customers met the contract requirements and were free from defects. Invoking the warranty prior to shipment helped fulfill that requirement. Further, the Army's warranty coverage contemplates the use of rotable spares in this manner. Finally, the report states that it was for the direct benefit of the Army that the warranty was invoked in this manner because of its obligation to deliver acceptable systems to its foreign customers.

The Whistleblower's Comments on the Supplemental Report of the Army

Mr. Daniels continues to dispute the Army's investigation and findings. He does not believe that the supplemental inquiry undertaken by Mr. Parise is unbiased and objective. He notes Mr. Parise' prior employment by the Army General Counsel's Office, that he is being paid as an expert by the Army, and contends that these factors have led him to echo the false and misleading statements contained in the Army's initial report. This situation suggests, Mr. Daniels writes, that the Army General Counsel's Office has gone "rogue." Thus, Mr. Daniels notes his intention to file additional "complaints" with the Office of Special Counsel.

Further, Mr. Daniels states that to allow the Army to investigate the actions of its own employees does not make sense. The investigation should, instead, be conducted by the Office of the Secretary of Defense, or an independent agency Inspector General.

He states that the Army's conclusions were based on the false premise that separate fixed price MLRS system production contracts and the required contract production tasks and issues were within the scope of performance of the separate and concurrent MLRS cost-reimbursable IES contracts. Mr. Daniels maintains that separate MLRS system production contract required tasks along with R&D and EMD separate contract tasks were prohibited in the Statements of Work of the IES contracts.

Mr. Daniels comments that the supplemental report does not consider, among other things, years of contract and performance data from Lockheed Martin, accounting ledgers, invoices, previous government investigations, and one corroborating witness. The failure to consider this information, he believes, casts doubt upon the agency's conclusions. Additional questions remain on the issues of accountability for AMCOM and PEO past and present employees for, as Mr. Daniels describes, their intentional procurement fraud, theft by deception, recreant acts of omission, and criminal dereliction of official responsibilities and fiduciary duties in apparent exchange for promotion, private gain or employment with Lockheed Martin. In conclusion, Mr. Daniels does not believe that the Army has provided the requisite information in this case and does not believe the findings of the agency reports appear to be reasonable.

Conclusion

Based on the representations made in the Army's reports and as stated above, OSC has determined that the report contains all of the information required by statute and that the reports' findings appear to be reasonable.