



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

Note on the Comments of Mr. Daniels

Mr. Daniels submitted comments on the Army's initial report and on the supplemental report. When Mr. Daniels submitted his comments on the supplemental report, dated October 9, 2009, he included a copy of his first set of comments, dated March 11, 2009, as an appendix. Thus, Mr. Daniels first set of comments on the Army's report appears in Appendix B of his comments dated October 9, 2009.

Mr. Clarence N. Daniels
1503 Sparkman DR NW APT: N109
Huntsville, AL 35816
October 9, 2009

Hon. William E. Reukauf, Acting US Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W.
Suite 300
Washington, D.C. 20036-4505

Dear Mr. Reukauf,

Please accept my comments to the feudatory and counterfeit Department of Army (DA), Supplemental Report of Investigation (ROI), dated, 11 Sep 09, of the Office of Special Counsel (OSC) \$184M+ collusive fraud case file numbers DI-00-1499 and DI-09-0045, as it has not been reviewed, executed, or submitted to the Special Counsel and the Whistleblower pursuant to statutory requirements of 5 U.S.C. § 1213(c) & (d), and it lacks the specific information requirements mandated by law (**See Attachment 01**).

The DA imposturous Supplemental ROI as presented is not legally sufficient or reasonable and was not prepared, conducted, or submitted in accordance with generally accepted government auditing standards, *legal precedent, contract law, or federal law which requires its review and signature by the head of the Agency (Secretary of the Army), or a duly authorized representative, nonetheless; in the expedient interest of convening proper unbiased investigations and forensic contract cost accounting and government property audits concerning my indelible allegations that are completely independent of DA recreant obfuscations, and its repeated willful falsification and omissions of material facts, official records, and despicable ad hominem attacks, I will address the DA imposturous Supplemental ROI as submitted.

The DA imposturous Supplemental ROI fails to disclose implicative conflict of interest, ethical, and post government employment violations and restrictions between alleged former government employee, Mr. Robert Parise and his former employment under the DA, Office of the General Counsel (OGC), (**See Attachment 02**).

Mr. Parise's imposturous and feudatory report by design does not and cannot reflect an objective and unbiased investigation. Mr. Parise's signed report in no way can be substituted for the DA, Secretary ROI as required by law, which cannot be circumvented by Mr. Parise (an alleged private contractor with direct ties to the DA, OGC) or the DA, OGC.

It is obvious that Mr. Parise is being paid public funds by the DA, OGC to collaborate false/misleading statements and bogus findings contained in the two previous DA, ROIs of DI-00-1499 submitted to the Special Counsel as required by law.

This untenable situation suggests that the DA, OGC for whatever reason has gone rogue. I will be filing formal written complaints with the OSC concerning this and other repeated Agency malfeasance in the near future.

To continue to allow present and former perfidious DA management officials and employees to literally investigate and re-investigate themselves, their employers or former employers concerning my allegations at this point is total nonsense and unethical, as it was from the start of the purported DA, ROIs.

Any credible new investigations of DI-00-1499 and its 30 Sep 05, Supplement (DI-09-0045), should had been independently conducted by the Office of the Secretary of Defense (OSD), or an independent Agency IG (**See Appendix A and Attachment 03**).

Both prior DA, ROIs and the imposturous Supplemental ROI are misguided, their findings are legally flawed and are in no way consistent with the plain negotiated language of the questioned contracts, legal precedent, documented facts, books, and records of the questioned events, first-hand witness statements, generally accepted audit and cost accounting principles, and federal law (**See Appendix B**).

Based solely on documented verifiable evidence of longtime collusive multi-million dollar cost-type Multiple Launch Rocket System (MLRS), Industrial Engineering Services (IES), and fixed price MLRS, System Production contract fraud, a long overdue criminal investigation of the suspected government perpetrators that were most likely complicit in the confirmed Lockheed Martin Corporation (LMC), fraud is warranted.

Despite a more than six year malingering DA and DOD, IG investigation of DI-00-1499, essential and warranted investigations of at least \$84 million more in collusive LMC and government employee past and present systemic criminal activities, false claims, and insidious duplicate MLRS contract mischarges remain in limbo (**See Appendix C**).

Once again the DA through its purported Supplemental ROI did not address a myriad of essential questions, personal conflicts of interests, government and contractor documented records of events, and a first-hand collaborating contractor witness statement paramount to any rudimental investigation of DI-00-1499 (**See Appendix B**).

Many of the DA, ROIs false findings were based upon the false and unfounded premise that completely separate fixed price MLRS system production contracts and their required contract production tasks and issues were fully within the scope of performance under the referenced separate and concurrent MLRS cost-reimbursable IES contracts. This was a false assumption repeatedly utilized in the DA, ROIs and was again repeated in the purported Supplement.

Separate MLRS system production contract required tasks, as well as R&D and EMD separate contract tasks were expressly prohibited in the opening paragraphs to each one of the separate Statements of Work (SOW) incorporated into the referenced IES contracts.

The purported Supplemental ROI also does not consider years of essential and relevant LMC contract cost and past performance data, contract data item reports, accounting ledgers, invoices, pertinent books, and records generated and compiled at considerable government expense, previous concurrent government investigations of LMC questionable and alleged multi-million fraudulent business practices, and at least one apparent willing and credible LMC collaborating management witness for the Government were either completely ignored by DA investigators and/or auditors or were not considered, reviewed, or interviewed during the more than six year malingering conduct of the DA, ROIs. This undisputable fact alone cast serious doubt as to the intent, veracity, and rudimental completeness of the purported DA, ROIs and its purported Supplement.

My original questions concerning the investigations of DI-00-1499 and its 30 Sep 05 Supplement remain completely unanswered while perfidious DA, AMCOM, and PEO past and present management officials remain completely unaccountable for their intentional procurement fraud, theft by deception, recreant acts of omission, and criminal dereliction of their official, ethical, and fiduciary duties in apparent exchange for promotion, private gain, or post government employment through Lockheed Martin.

Again, based on my review of the previous DA, ROIs, the instant DA feudatory and counterfeit Supplemental ROI as presented, and previous Government investigations and audits confirming longtime covert LMC pervasive, enduring, and collusive contract fraud which are overwhelmingly contrary to false, incredible, and unverifiable Agency claims and findings, I have determined that the purported DA, Supplemental ROI does not contain all of the information required by statute and that its findings are unreasonably superficial and legally flawed. Its illicit presentation to both the Special Counsel and the Whistleblower rises to the level of criminal obstruction through its compounding and repeating of knowingly false statements and claims. To this end, I consider both OSC cases DI-00-1499 and DI-09-0045 to be open until they are properly investigated as required by federal law.

Declaration

I, CLARENCE N. DANIELS, do hereby declare:

I declare under penalty of perjury under the laws of the United States of America that the foregoing comments and the attached supporting documentation are true and correct to the best of my knowledge and belief.



October 9, 2009

SIGNATURE

DATE

Attachments,
Appendix A
Appendix B
Appendix C

CF, with w/o Attachments,

Hon. Eric Holder, US Attorney General
Hon. Pete Geren, Secretary of the Army
US Attorney for the Northern District of Alabama
US Attorney for the District of Columbia
Government Accountability Office, Fraud-Net

*5 Jan 05, DOJ and LMC \$1.4 million Settlement agreement for LMC 1994-1998 mischarges on IES contracts, (CID Report #0038-99-CID113-20797)

Attachment 1

Requirements of 5 U.S.C. § 1213(d)

Any report required under subsection (c) shall be reviewed and signed by the head of the agency¹ and shall include:

- (1) a summary of the information with respect to which the investigation was initiated;
- (2) a description of the conduct of the investigation;
- (3) a summary of any evidence obtained from the investigation;
- (4) a listing of any violation or apparent violation of law, rule or regulation; and
- (5) a description of any action taken or planned as a result of the investigation, such as:
 - (A) changes in agency rules, regulations or practices;
 - (B) the restoration of any aggrieved employee;
 - (C) disciplinary action against any employee; and
 - (D) referral to the Attorney General of any evidence of criminal violation.

In addition, we are interested in learning of any dollar savings, or projected savings, and any management initiatives that may result from this review.

¹ Should you decide to delegate authority to another official to review and sign the report, your delegation must be specifically stated.

Attachment 2

Attachment 02



DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY MATERIEL COMMAND
9301 CHAPEK ROAD
FORT BELVOIR, VA 22060-5527

REPLY TO
ATTENTION OF

AMCCC-G

20 October 2005

MEMORANDUM FOR Department of the Army, Office of the General Counsel,
ATTN: Ms. Cassandra T. Johnson, 104 Army Pentagon, Washington D.C. 20310-0104

SUBJECT: Whistleblower Investigation – U.S. Army Aviation and Missile Command
(AMCOM) (OSC File No DI-00-1499)

1. The Office of Special Counsel (OSC) has directed the Army to conduct an investigation, in accordance with 5 U.S.C. 1213(c)(1) and (g), into violations of law, rule or regulation, fraud, waste of funds, and a substantial and specific danger to public safety by employees at AMCOM, Redstone Arsenal, Program Office, Tactical Missiles, Multiple Launch Rocket System (MLRS), Division, Huntsville, Alabama.
2. AMC forwarded the 20 August 2003 letter directing the Department of the Army to the U.S. Army Criminal Investigation Division (CID) and the CID agreed to investigate all allegations. In April 2005, CID closed out their investigation.
3. Due to the complexity of the matter, CID has reopened their investigation regarding all allegations contained in the OSC's original letter. Due to the time need by CID to reinvestigate, this office is requesting an extension from OSC.
4. If you need any further assistance on this matter, please contact Amy Armstrong at 703-806-8277.

A handwritten signature in black ink, appearing to read "R. Parise", enclosed within a hand-drawn oval.

ROBERT L. PARISE
Acting Command Counsel



DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY MATERIEL COMMAND
9301 CHAPEK ROAD
FORT BELVOIR, VA 22060-5527

Attachment 02

REPLY TO
ATTENTION OF


AMCCC-G

21 July 2005

MEMORANDUM FOR Ms. Cassandra Johnson, Department of the Army,
Office of General Counsel, 104 Army Pentagon, Washington, D.C. 20310-0104

SUBJECT: Whistleblower Investigation – U.S. Army Aviations and Missile Life Cycle
Management Command (AMLCMC) (OSC File No DI-00-1499)

1. The U.S. Army Material Command (AMC) requests a sixty (60) day extension in connection with the Office of Special Counsel (OSC) case referenced above.
2. The U.S. Army Criminal Investigation Command (CID), 701st Military Police Group, Fort Belvoir, VA closed out their investigation regarding this matter on 27 April 2005. The Assistant United States Attorney's (AUSA) office declined to prosecute the matter and recommended administrative action by the U.S. Government. (Enclosure 1)
3. AMC was informed the case had been closed and to submit a written request for a copy of the reports. (Enclosure 2) Copies of the reports were provided to AMC on 24 June 2005.
4. We are in the process of reviewing the reports and determining the appropriate administrative action. We are coordinating our efforts with various Army components that have subject matter interest in these allegations and will require an extension of the 25 July 2005 deadline.
5. If you need further assistance on this matter, please contact Amy Armstrong at 703-806-8277.


ROBERT J. PARISE
Acting Command Counsel

Attachment 3

Daniels, Clarence N CIV USA AMC

Attachment 03

Subject: Whistleblower response to DA imposturous 11 Sep 09 Supplemental Report of Investigations of DI-00-1499 and DI-09-0045. (UNCLASSIFIED)

From: Daniels, Clarence N CIV USA AMC
Sent: Wednesday, October 07, 2009 9:57 AM
To: 'tbiggs@osc.gov'
Cc: Rosen, William Mr CIV USA AMC; 'hotline@dodig.mil'; 'fraudnet@gao.gov'; Beam, Dayn T CIV USA AMC; Baddley, Laura L CIV USA USACIDC; Allen, Fred W CIV USA AMC; 'OIGHotline@opm.gov'; 'oversight@opm.gov'; Barna, Stephanie A SES CIV USA OGC; Johnson, Cassandra T Ms CIV USA OGC; 'fraudnet@gsa.gov'; 'npftf@usdoj.gov'; Myles, James R MG MIL USA AMC; 'inspector.general@usdoj.gov'; 'inspector.general@eeoc.gov'; 'criminal.division@usdoj.gov'; 'commentline@wartimecontracting.gov'; 'clark.irwin@wartimecontracting.gov'; Parise, Robert J CIV USA; Montrese, Jeanne Ms CIV DOD SIGIR; 'SIGIR-Iraq@iraq.centcom.mil'; 'luis.reyes@sigir.mil'; Daniels, Clarence N CIV USA AMC
Subject: Whistleblower response to DA imposturous 11 Sep 09 Supplemental Report of Investigations of DI-00-1499 and DI-09-0045. (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Ms Biggs,

Thank you for the opportunity to respond to the subject Department of Army (DA), purported Supplemental Report of Investigations of OSC case file numbers DI-00-1499 (\$100M+) and DI-09-0045 (\$84+).

The DA imposturous 11 Sep 09 Supplemental Report as presented is not legally sufficient or reasonable and has not been prepared, conducted, or submitted in accordance with established government auditing standards, legal precedent, contract law, or federal law which requires its review and signature by the head of the Agency (Secretary of the Army) or a duly authorized representative, nonetheless; in the expedient interest of convening proper unbiased investigations and forensic cost audits of my heretofore indelible allegations independent of *DA recreant malingering, falsification, and omission of material facts and evidence, I will respond to the DA imposturous Supplemental Report as submitted.


I had been TDY during the week of 27 Sep - 2 Oct 09, and did not receive the DA purported Supplemental Report until 5 Oct 09 and I respectfully request an extension of the due date for my written comments until 29 Oct 09.

Call me if you have any questions or if further documentation is required.

Declaration

I, CLARENCE N. DANIELS, do hereby declare:

I declare under penalty of perjury under the laws of the United States of America that the foregoing comments and the attached supporting documentation are true and correct to the best of my knowledge and belief.



SIGNATURE

October 7, 2009
DATE

Best Regards,

Clarence N. Daniels
Contract Specialist
256 876-8980

* I will again be filing formal written complaints through the OSC concerning these repeated DA illegal and unethical acts and issues.

Daniels, Clarence N CIV USA AMC

From: Daniels, Clarence N CIV USA AMC
Sent: Monday, October 05, 2009 4:15 PM
To: 'tbiggs@osc.gov'
Cc: Rosen, William Mr CIV USA AMC; 'hotline@dodig.mil'; 'fraudnet@gao.gov'; Beam, Dayn T CIV USA AMC; Baddley, Laura L CIV USA USACIDC; Allen, Fred W CIV USA AMC; 'OIGHotline@opm.gov'; 'oversight@opm.gov'; Barna, Stephanie A SES CIV USA OGC; Johnson, Cassandra T Ms CIV USA OGC; 'fraudnet@gsa.gov'; 'npff@usdoj.gov'; Myles, James R MG MIL USA AMC; 'inspector.general@usdoj.gov'; 'inspector.general@eeoc.gov'; 'criminal.division@usdoj.gov'; 'commentline@wartimecontracting.gov'; 'clark.irwin@wartimecontracting.gov'; Daniels, Clarence N CIV USA AMC; Parise, Robert J CIV USA; Montrese, Jeanne Ms CIV DOD SIGIR; SIGIR-Iraq@iraq.centcom.mil; luis.reyes@sigir.mil
Subject: Unmitigated Catastrophic Safety Hazards of MLRS, M270A1 and HIMARS launchers deployed during Operation Iraqi Freedom. (UNCLASSIFIED)
Attachments: Safety1 22May03.ppt

Classification: UNCLASSIFIED

Caveats: NONE

To All,

Attached for your review and consideration is an additional Government prepared presentation to AMCOM management concerning the timeline of the improper conditional acceptance, fielding, and lurid tactical deployment of non-conforming, unsafe, and defective MLRS, M270A1 launchers into a combat zone and the implicit absence of any effective post acceptance/pre-deployment mitigation of the then deployed M270A1 launchers' catastrophic safety hazards while in theater.

Clarence N. Daniels

/s/

Contract Specialist
256 876-8980

-----Original Message-----

From: Daniels, Clarence N CIV USA AMC
Sent: Friday, August 14, 2009 9:19 AM
To: Parise, Robert J CIV USA
Cc: Rosen, William Mr CIV USA AMC; 'tbiggs@osc.gov'; 'hotline@dodig.mil'; 'fraudnet@gao.gov'; Beam, Dayn T CIV USA AMC; Baddley, Laura L CIV USA USACIDC; Allen, Fred W CIV USA AMC; 'OIGHotline@opm.gov'; 'oversight@opm.gov'; Barna, Stephanie A SES CIV USA OGC; Johnson, Cassandra T Ms CIV USA OGC; 'fraudnet@gsa.gov'; 'npff@usdoj.gov'; Myles, James R MG MIL USA AMC; 'inspector.general@usdoj.gov'; 'inspector.general@eeoc.gov'; 'criminal.division@usdoj.gov'; commentline@wartimecontracting.gov; Daniels, Clarence N CIV USA AMC; clark.irwin@wartimecontracting.gov
Subject: Lockheed management 14 Apr 03 request for ECP/RFW of M270A1 launcher Critical Safety Hazards deployed during Operation Iraqi Freedom. (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

Mr. Parise,

Reference my previous supporting documentation concerning the conditional acceptance, fielding, and lurid tactical deployment of non-conforming, unsafe, and defective MLRS, M270A1 launchers into a combat zone.

The attached email records are forwarded for your consideration in reference to DA, ROIs concerning OSC whistleblower case files DI-00-1499 and DI-09-0045.

This evidence serves as additional conclusive proof that there had been positively no effective Government or Contractor contractually required post acceptance/pre-deployment remedy or mitigation of the catastrophic safety hazards and critical tactical operational flaws delineated in the Lockheed Martin SAR as presented and reviewed by Mr. Gary Indihar, (AMCOM Safety Office) in Oct of 2002.

Call me if you have any questions or if further documentation is required.

Best Regards,
Clarence N. Daniels

/S/

Contract Specialist
256 876-8980

Classification: UNCLASSIFIED

Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE

M270A1 LRIP III SAR Hazard Controls Matrix

Table 1-2 Hazard Risks and Control Types

Log No.	Hazard Title	Pre-Mitigation	After Mitigation	Hardware Control(s)	Software Control(s)	Procedural Control(s)
H01 (see para. 7.1.1)	Inadvertent/Premature Rocket Motor Ignition	IC	IE	Yes	Yes	Yes
H02 (see para. 7.1.2)	Rocket Motor Ignition Signal Issued When Launcher Loader is Incorrectly Positioned in No-Fire Zone	IE	IE	Yes	Yes	-
H03 (see para. 7.1.3)	Meteorological Sensor Hazards	NA	NA	-	-	-
H04 (see para. 7.1.4)	Uncommanded Hoist of Boom Movement	IIB	IID	Yes	Yes	Yes
H05 (see para. 7.1.5)	LLM Unlock Fault Hazard	IIIC	IIIE	-	Yes	-
H06 (see para. 7.1.6)	LLM Lock Fault Hazard	IIIB	IID	-	Yes	-
H07 (see para. 7.1.7)	FCP Elevated Temperature	IIB	IID	-	-	Yes
H08 (see para. 7.1.8)	Electrical Shock	IC	ID	Yes	-	Yes
H09 (see para. 7.1.9)	FCP Cooling Fans	IIC	IID	Yes	-	-
H10 (see para. 7.1.10)	Damage to LRUs due to Environmental Exposure	IIIC	IIIE	Yes	-	-
H11 (see para. 7.1.11)	Material Compatibility	IIC	IE	Yes	-	-
H12 (see para. 7.1.12)	Failure of Components Due to Vibration	IIIC	IIIF	Yes	-	-
H13 (see para. 7.1.13)	Software hazards	IIC	IIIF	-	Yes	-
H14 (see para. 7.1.14)	Inadvertent Rocket/Missile Firing from One LPA When Commanding a Firing from the Opposite LPA	IC	IE	Yes	Yes	Yes
H15 (see para. 7.1.15)	Uncommanded Enable Output May Result in Inadvertent Missile Launch	IC	IE	Yes	Yes	-
H16 (see para. 7.1.16)	Software Emergency Shutdown	IE	IE	-	Yes	-
H17 (see para. 7.1.17)	Personnel Exposure to Toxic Materials	IID	IE	Yes	-	Yes
H18 (see para. 7.1.18)	Electrical Fires	IID	IE	Yes	Yes	Yes
H19 (see para. 7.1.19)	Electric Shock Imparted to Personnel	IID	IE	Yes	Yes	Yes
H20 (see para. 7.1.20)	LD5 Speed Default to Tactical Speed	IE	IE	-	Yes	-
H21	Uncommanded Cage Movement and/or Overspeed Condition at	IID	IE	-	Yes	-

M270A1 LRIP III SAR Hazard Controls Matrix

Log No.	Hazard Title	Pre-Mitigation	After Mitigation	Hardware Control(s)	Software Control(s)	Procedural Control(s)
(see para. 7.1.21)	Tactical Speed (Azimuth and/or Elevation)					
H22 (see para. 7.1.22)	Mechanical Failure of the ADU	E	IE	Yes	Yes	Yes
H23 (see para. 7.1.23)	Azimuth Brake Failure	E	IE	Yes	Yes	-
H24 (see para. 7.1.24)	Mechanical Failure of the Output Shaft of the Elevation Transmission	E	IE	Yes	-	-
H25 (see para. 7.1.25)	Mechanical Failure of the Angle Drive at the Input Interface	E	IE	Yes	-	-
H26 (see para. 7.1.26)	Failure of the LII to Control the Azimuth Motor	E	IE	-	Yes	-
H27 (see para. 7.1.27)	Operator Entanglement in the LDS System	IC	IE	-	Yes	Yes
H28 (see para. 7.1.28)	Leakage or Spraying of Hot Hydraulic Fluid	IIC	III	Yes	-	Yes
H29 (see para. 7.1.29)	Shaft Resolver Position Data Corrupted	IIC	IE	-	Yes	-
H30 (see para. 7.1.30)	Turns Count Problems	IC	E	Yes	Yes	-
H31 (see para. 7.1.31)	Movement into Damage Zone	IIC	IE	Yes	Yes	-
H32 (see para. 7.1.32)	Uncommanded Cage Motion	IB	ID	Yes	Yes	Yes

M270A1 LRIP III SAR Hazard Controls Matrix

The matrix used to prioritize hazards for corrective action and determine which hazards are acceptable is shown in Table 1-1.

Table 1-1 Risk Acceptance Criteria

Severity Probability	Catastrophic I	Critical II	Marginal III	Negligible IV
A Frequent				
B Probable				
C Occasional				
D Remote				
E Improbable				

Hazard Risk Index	Criteria
IA, IB, IC, IIA, IIB, IIIA	Unacceptable
ID, IIC, IID, IIIB, IIIC	Undesired (MA decision required)
IE, IIE, IIID, IIIE	Acceptable with review of MA
IIV A-E	Acceptable without review

Table 1-2 list the hazards along with a denotation of whether the hazard risk is reduced to an acceptable level by hardware control(s), software control(s), and/or procedural control(s).

M270A1-MLRS PROGRAM ACTION ITEM

ACTION TO BE COMPLETED BY: _____

LMMFC-D

AI CONTROL NO.: 573

MEETING: M270A1 System FCA

DATE: March 5, 2002

ACTION ITEM TITLE: General Requirements - Safety

REQUESTER: Gary Indihar

DATE: March 5, 2002

RESPONDENT: Edwin Stahlnecker

DATE DUE: September 20, 2002

ACKNOWLEDGEMENT (SIGN): _____

DATE: _____

LMMFC-D/CM: _____

ACTION ITEM DESCRIPTION: MIS-PRF-35500 Rev B - Para 3.2.10.1 & 3.2.10.2

Determine if the requirements are to be met by procedural steps or design mitigations

RESPONSE:

Attached is a matrix of the hazards, their assessed risk, and if the hazard is controlled by hardware, software, and/or procedural control(s). The only identified hazard controlled solely by procedures is the "FCP Elevated Temperature" which is denoted with orange highlight in the attachment. The IFCS SAR that was drafted stated that "Since this document was last published it has been determined by the MLRS Project Office that this hazard is not significant and no precautions, such as labels, are warranted. Therefore, this hazard (H-13) is closed."

In addition, hazard ID H21 is controlled both by software and procedures. This hazard deals with equipment damage and does not address personnel injury. Personnel injury is covered under hazard IDs H27 and H32 that included procedural controls associated with boom controller, exclusion zone, jury struts, turning off the engine, etc. The procedural controls associated with the boom controller and exclusion zone should be listed with hazard ID H21.

RESPONDENT SIGNATURE: _____

DATE: _____

REQUESTER SIGNATURE: _____

DATE: _____

LMMFC-D/CM: _____

Attachment 03

Rodriguez, Colleen M ACQ

From: Indihar, Gary F SAFETY
Sent: Friday, October 04, 2002 9:57 AM
To: 'Wilson, Cheryl'; Stahlnecker, Edwin
Cc: Rabb, David (E-mail); Rodriguez, Colleen M ACQ
Subject: RE: M270A1 System FCA Action Item #573

To All,

Since it is my belief that the M270A1 Launcher does not meet the critical Safety Performance Requirements addressed by this FCA Action Item, particularly in the area of Launcher control, single-point failures, and associated personnel safety without strict reliance on procedures (in violation of the requirements of Mil-Std-882 and Lockheed Martin Safety program policy, in addition to the Performance Requirements), and, since AMCOM contracts is still currently investigating this issue and could possibly negotiate aspects of it with Lockheed Martin based on the Govt Safety Risk Reduction Effort (SRRE) completed earlier this year, I am unable and unwilling to further comment on or approve anything safety related to the M270A1 Launcher in good conscience. Although I have no doubt that Mr. Stahlnecker answered the Action Item to the best of his ability given what he inherited, it does not resolve the main issue of non-compliance with the above mentioned requirements. In addition, I ask that in the future, all safety related documentation\action item issues related to the M270A1 Launcher be sent through the appropriate PFRMS Project Office personnel and contracts/legal representatives for disposition.

Gary Indihar
AMCOM Safety

-----Original Message-----

From: Wilson, Cheryl [mailto:cheryl.wilson@lmco.com]
Sent: Thursday, October 03, 2002 6:36 PM
To: Indihar, Gary (E-mail); Rabb, David (E-mail)
Cc: Stahlnecker, Edwin; Hudson, John B; Shipp, Donald
Subject: M270A1 System FCA Action Item #573

David, Gary

Attached is the response to M270A1 System FCA Action Item #573 for review and approval. Please sign and return by fax or email.

<<AI_573.pdf>>

Thank you,

Cheryl Wilson
Configuration/Data Management Manager
Lockheed Martin Missile and Fire Control - Dallas
P.O. Box 650003, M/S: MC-20
Dallas, TX 75265-0003
Phone: (972) 603-1131
Fax: (972) 603-9621

cheryl.wilson@lmco.com



*US Army Aviation & Missile Command
Acquisition Center*



**M270A1
LAUNCHERS**

**CONTRACT
DAAH01-00-C-0109
DAAH01-98-C-0138**

22 May 2003



US Army Aviation & Missile Command Acquisition Center



AGENDA

- **ISSUES**
- **SAFETY**
- **Low Cost Fire Control Panel (LCFCP)**
- **ACQUISITION POSITION**
- **SAFETY POSITION**
- **PMO POSITION**
- **LAUNCHER DELIVERY SCHEDULE**
- **CONCLUSIONS**



*US Army Aviation & Missile Command
Acquisition Center*



ISSUES

- **SAFETY**
 - specification non-compliance per the terms and conditions of the contract
- **Low Cost Fire Control Panel (LCFCP)**
 - LRIP IV



US Army Aviation & Missile Command Acquisition Center



SAFETY FACTS

- **3 Apr 2002 PM Meeting:**
 - Contracting Officer becomes aware that the program office obtained an independent safety report to address safety concerns.
 - Lockheed did not conduct a Safety Risk Reduction Effort or obtain an approved Safety Assessment Report.
 - PCO started to seek consideration for the effort above Safety Risk Reduction Effort (SRRE) not performed by LM
- **Nov 2002 Meeting w/Legal:**
 - Project Office must provide one position to the PCO



*US Army Aviation & Missile Command
Acquisition Center*



**SAFETY FACTS
(Cont.)**

- **22 Nov 2002 PMO Office e-mail: (Exhibit 1)**
 - Meets performance requirements of the specification (MIS-PRF-35500) but does not meet terms of the contract (Safety Program) and consideration is warranted.
- **15 Jan 2003 PMO Office e-mail: (Exhibit 2)**
 - SAR is not approved (PFRMS disapproval letter dated 24 Jan 2002) (Exhibit 3), does not allow closure of FCA action item #573 (SAR) to the satisfaction of the contract.



*US Army Aviation & Missile Command
Acquisition Center*



**SAFETY FACTS
(Cont.)**

- **21 Jan 2003 PCO Letter to LM, Request Corrective Action prior to Acceptance of Launchers: (Exhibit 4)**
 - Memo date revised to 12 Feb 2003
 - The SAR is disapproved.

- **25 Feb 2003 Memo from PMO to LM, Contract Data Item Disapproved: (Exhibit 5)**
 - LRIP III Final Safety Assessment Report (re-submittal) and data item (SAR)
 - above memo supersedes letter dated 6 Apr 2002 (Exhibit 6), which approved the SAR in error
 - 24 Jan 2002 PMO letter disapproved the SAR



*US Army Aviation & Missile Command
Acquisition Center*



**SAFETY FACTS
(Cont.)**

- **13 Mar 2003 Safety Memo: (Exhibit 7)**

- Material Release:

- PMO used the Army Safety Risk Management process to gain acceptance of residual hazards
 - agreed to a Get-Well Plan to correct safety deficiencies
 - Safety Office concurred with the above approach and with the conditional release of the M270A1 launchers



*US Army Aviation & Missile Command
Acquisition Center*



**SAFETY FACTS
(Cont.)**

Compliance with the Safety requirements in the
Specifications:

- The SRRE identified several single point failures that could result in critical hazards (not addressed in the ILMS SAR)
- Safety Office position is that the M270A1 does not comply with the requirements of Paragraph 3.2.10.2 of MIL-PRF-35500
- The above issue needs to be corrected through the proper contractual avenues.



*US Army Aviation & Missile Command
Acquisition Center*

**SAFETY FACTS
(Cont.)**

- **18 Mar 2003 Project Manager Memo: (Exhibit 8)**
 - Request to extend delivery of launchers to 23 Apr 2003.
 - PCO advised the ACO to attach the above memo to the DD250's.

- **20 Mar 2003 PCO Memo to LM: (Exhibit 9)**
 - Certify and validate they were in compliance with the terms and conditions of the contract.

- **4 Apr 2003 LM responds to the PCO Memo: (Exhibit 10)**
 - 3 boxes of information.



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**SAFETY FACTS
(Cont.)**

- **11 Apr 2003 PCO Letter to DCMC: (Exhibit 11)**
 - Ensure launchers meet terms and conditions of the contract before acceptance.
- **23 Apr 2003 ACO Memo to LM: (Exhibit 12)**
 - Reject supplies or services not conforming in all respects to contract requirement.
- **Currently:**
 - Awaiting Project Office response with the Safety's Office
Input



US Army Aviation & Missile Command Acquisition Center



LCFCP FACTS

- **LRIP IV (LCFCP):**

- 24 Apr 2003 QAR E-mail (**Exhibit 13**)
 - Does not conform to the contract, primary defects appear to be related to the GDU
 - Complicating factors, potential software problems between Version G and Version F (tactical)
 - Problems with 5 Launchers in Korea
 - High failure rate



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Acquisition Center*

ACQUISITION OFFICE POSITION

SAFETY:

- The Safety Office must provide their position to the Project Office.
- The Project Office must provide a consolidated position to the PCO.

LRIP IV (LCFCP):

- PMO Position



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Acquisition Center*



SAFETY OFFICE POSITION

- **REF: 13 Mar 03 Memo (2 Positions):**
 - Material Release
 - Compliance with the Safety requirements in the Specifications



US Army Aviation & Missile Command Acquisition Center



PMO POSITION

- 29 Apr 03 Telecom: (Acquisition Center and PM Office)
 - (1) System Safety Risk Assessment (SSRA)
 - Is the system Safe? Yes, with strict reliance on procedures.
 - Program Office will generate SSRA to be signed by all levels of authority.
 - (2) Close-out FCA
 - Is the hardware in compliance with the specifications of the contract? No
 - De-scope and request consideration from LM.
 - **PM to work language for conditional acceptance.



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CONCLUSIONS

- Consideration (Waiver)
- Requirements Change (De-scope of performance specifications-SSRA-Equipment must match the contract)
- Close FCA/SAR
- Re-look Conditional Release
- Resolve LCFCP
- Re-coup IES Software expenses that should have been absorbed under the FFP line for M270A1

Daniels, Clarence N CIV USA AMC

From: Rodriguez, Colleen M ACQ
Sent: Wednesday, April 16, 2003 5:33 PM
To: Jones, Deisy R MAJ ACQ; Daniels, Clarence N ACQ
Subject: FW: DRAFT SAR Related Language Change to MIL- PRF-35500

FYI. Colleen

-----Original Message-----

From: Terrie Bramlett [mailto:Terrie.Bramlett@msl.army.mil]
Sent: Wednesday, April 16, 2003 10:15 AM
To: William.Pottratz@redstone.army.mil
Cc: Colleen.Rodriguez@redstone.army.mil
Subject: RE: DRAFT SAR Related Language Change to MIL- PRF-35500

Thanks Bill.

Terrie

>>> "Pottratz, William J SAFETY" <william.pottratz@us.army.mil>
4/16/2003 8:47:18 AM >>>

I have several issues with this approach:

1. I think that a waiver request is more appropriate at this point since the Government can get consideration for the failure to meet the requirements.
2. The proposed change is not acceptable now or in future specifications. It basically relieves the contractor of any responsibility to eliminate the hazards since he can always control them through warnings that may be difficult to enforce or hamper operations (3 meter rule for M270A1 is a good example).

Bill Pottratz

-----Original Message-----

From: Bezner, John [mailto:john.bezner@lmco.com]
Sent: Monday, April 14, 2003 5:16 PM
To: 'terrie.bramlett@msl.army.mil'
Cc: 'wayne.burke@msl.army.mil'
Subject: DRAFT SAR Related Language Change to MIL- PRF-35500

> Terrie,
>
> Reference our meeting in Huntsville on 10 April 2003.
>
> Talking to our team here in Dallas, if possible, we would prefer to
make
> the correction to the "paper" using the ECP process versus the
"waiver"
> process.
>
> In either case, based upon our understanding of the government's
position,

> the recommended language change, shown in red, would be made to
> MIL-PRF-35500 (Current Revision).
>
> 3.2.10.2 Critical hazard. Known single-point failures which may
result
> in catastrophic or critical safety hazards or mishaps, shall be
precluded
> from the system except for those identified in Safety Assessment
Reports
> (SAR) as defined in paragraph 6. In the event that any known
single-point
> failure is not precluded by design, then one or more of the
following
> additional safety risk mitigation actions shall be implemented to
address
> safety risk: incorporate safety devices, provide warning devices,
and/or
> develop procedures and training.
>
> Please let me know if this language change is considered to be
acceptable,
> and if we can use the ECP process to implement this language change.
>
> John
> John Bezner
> Director, After Market Enterprises & Launcher Modernization
> Lockheed Martin Missiles and Fire Control - Dallas
> Phone: 972-603-2640
> Mobile: 972-742-0315
> Fax: 972-603-0193
> E-Mail: john.bezner@lmco.com
>
>

Daniels, Clarence N CIV USA AMC

From: Rodriguez, Colleen M ACQ
Sent: Wednesday, April 02, 2003 3:11 PM
To: Daniels, Clarence N ACQ
Subject: FW: System Safety Risk Assessment (SSRA) for M270A1

> -----Original Message-----

>From: Pottratz, William J SAFETY
>Sent: Wednesday, March 19, 2003 3:23 PM
>To: Rodriguez, Colleen M ACQ
>Subject: System Safety Risk Assessment (SSRA) for M270A1

>

>Colleen,

>

>I can't seem to find a copy of the SSRA for the M270A1 that allowed Materiel Release. I checked with Gary via email, and still can't find a copy here. He thought that you may have a copy (one signed by the PEO?). Please let me know if you have a copy of this document.

>

>Bill

Daniels, Clarence N CIV USA AMC

From: Rodriguez, Colleen M ACQ
Sent: Wednesday, April 02, 2003 2:54 PM
To: Daniels, Clarence N ACQ
Subject: FW: SSRA for M270A1

> -----Original Message-----

>From: Pottratz, William J SAFETY
>Sent: Wednesday, April 02, 2003 12:40 PM
>To: Rodriguez, Colleen M ACQ
>Subject: SSRA for M270A1

>

>Colleen,

>

>I finally tracked down the status of the SSRA. It turns out that Gary made an independent decision not to pursue the SSRA and neglected to consult with or inform anyone else in the Safety office. Thanks for trying to find the documentation.

>

>Bill

Appendix A

Appendix A

Mr. Clarence N. Daniels
1503 Sparkman DR NW APT: N109
Huntsville, AL 35816
July 23, 2009

Mr. Robert J. Parise
Army Materiel Command, HQ
Office of the Command Counsel, (AMCCC)
9301 Chapek Rd
Ft. Belvoir, Virginia 22060

Dear Mr. Parise,

Please accept my additional comments and the documents listed below and attached hereto in support of my allegations which were referred for investigation by the Secretary of the Department of Army (DA), by the US Office of Special Counsel (OSC), case file number DI-00-1499 and as requested in your 17 Jul 09, letter.

1. A copy of the background information to Contracting Officer 15 October 2002 letter (TAB 37 of DA Report of Investigations (ROIs), no. 1) was provided to you during the course of the interview and that information was included in Exhibit 7.
2. Lockheed Martin's (LM), and DCMA, ACO rotatable spares audit reports are provided under **TAB A** of the attachments to this letter.
3. Two letters regarding Lockheed Martin use of the spares warranty is provided under **TAB B** of the attachments to this letter.
4. Contracting Officer email circa 2003 regarding my rotatable spares concern is provided under **TAB C** of the attachments to this letter.
5. A cover letter to TAB 42 of DA Report 1 (a listing of spare parts) is provided under **TAB D** of the attachments to this letter.
6. *Complete number of fax pages to Exhibit 6 (The "Request for Shipment" forms provided by DCMA). Fax is provided under **TAB E** of the attachments to this letter.
*Page 014 of 015 cannot be currently located and will be provided asap.
7. Supporting documents concerning the ten (10) emails sent to you on 15 July, 2009 between 5:30PM -5:50 PM and emails of July 16th and 17th, are provided under **TAB F** of the attachments to this letter.

8. Post Business Clearance Memorandums (BCMs), for the final settlement and incorporation of VECP 1450A1 into contract no. DAAH01-89-C-0336 are provided under **TAB G** of the attachments to this letter.

Again I want to reiterate that the 5 year delinquent DA, ROIs were misguided and are incomplete, the findings are based on false unfounded assumptions and the conclusions are in no way consistent with documented facts of the case, contract law, first-hand witness statements, statutory requirements, and the legal basis upon which the LM admitted \$1.4M, IES contract cost mischarging Settlement was based. The DA, ROIs lack or ignored the plain language of the negotiated Industrial Engineering Services (IES), contracts, substantial relevant credible evidence, recent significant relevant events, personal conflicts of interests, and relevant first-hand witness statements provided by the whistleblower to the OSC over the last 8 years.

Despite a more than five year DA investigation none of the questioned cost-reimbursable Industrial Engineering Service (IES), contracts were subjected to essential forensic contract cost data mining, forensic post-award cost, technical, or government property audits related directly to prior confirmed LM contract mischarges, confirmed IES insidious contract cost transfers and overpayments, and covert multi-million government property misuse and its theft by deception.

Literally years of essential and relevant LM, IES contract cost data, past M270A1/HIMARS launcher safety and performance data and reports, IES contract data item cost reports, accounting ledgers, invoices, pertinent books, and records generated and compiled at considerable government expense appear to have been completely ignored by DA investigators. This fact alone cast serious doubt as to the intent, veracity, and rudimental completeness of the purported DA, ROIs.

DA investigation/interview of significant government and contractor first-hand witnesses, current relevant events, and relevant parts of my supplemental allegations to DI-00-1499 submitted to OSC on 30 Sep 05 (DI-09-0045, \$84M+) were not included as part of the DA, ROIs as presented, such as:

24 Apr 03, ACO issuance of Corrective Action Request (CAR), no. DCM03-058 -- DAAH01-98-C-0138 multi-million dollar labor cost mischarging as confirmed by DCMA and DCAA, LM resident offices with no known LM corrective actions or DA recoupment of mischarged costs to date.

Lockheed Martin's alleged ethical and implicative conflict of interest violations surrounding the most recent purported recruitment and hiring of Mr. Jim Byrne, the former Deputy to the US Office of Special Counsel for work in its corporate legal office in July of 2008 along with Mr. James Comey, former Deputy to the US Attorney General.

Lockheed Martin illegal attempt to recoup through its overhead costs the \$1.4 million dollar settlement amount for previous IES contract mischarges in brazen violation of FAR 52.216-7, "Allowable Cost and Payment" and the expressly prohibitive language included in the fully executed Jan 05, IES contract cost mischarging Settlement Agreement.

An apparent willing and credible LM former IES Contract Manager and collaborating first-hand witness for the Government identified to the OSC, appears to have been completely ignored and never contacted by DA investigators.

The alleged LM theft by deception in collusion with perfidious AMCOM and PEO management officials of more than \$4.5 million in false claims through fraudulent manipulation and inflation of the total negotiated fixed price contract line item amounts for M270Al initial spare parts option quantities that had been previously awarded under contract number DAAH01-98-C-0138. Total obligated line item amounts as shown in the contract were falsified by phantom decreases made to the contract by modification no. P00030.

The conditional acceptance and improper full contract price payment for more than 100 non-conforming and unsafe MLRS, M270Al launchers by the Government. LMMFC is contractually obligated to perform all post acceptance corrective action required, at no additional cost to the Government, to bring all previously delivered launchers into full contract compliance, pursuant to FAR 52.246-2(1) of fixed price production contracts DAAH01-98-C-0138 and DAAH01-00-C-0109. LM corrective action is being surreptitiously performed at government expense under government cost-type Engineering Services contracts DAAH01-98-C-0157, DAAH01-00-C-0141, and other government funded MLRS contracts. Fraudulent costs being charged to the Government for LM required corrective action to bring the launchers into full contract compliance with safety and performance specifications are currently estimated at more than \$60 million.

These significant supplemental allegations and a heretofore myriad of DA, ROI false statements, inexcusable omissions of relevant material facts, and first-hand witness statements and documentation are none the less inseparable from any credible investigation of DI-00-1499 and must be reasonably addressed by the DA and also made a part of the permanent sworn and documented record.

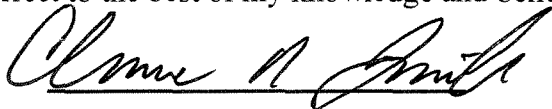
Notwithstanding the conclusion of my interview it must be understood that I will not consider my interview or statements made during its conduct to be conclusive concerning the questioned DA,ROIs until all heretofore inseparable allegations contained in both OSC Case File DI-00-1499 (\$100M+) and DI-09-0045 (\$84M+) have been reasonably investigated and addressed by the DA.

Based on my review of the DA, ROIs, and considering the amount of available credible relevant evidence and previous audits confirming collusive LM contract fraud that are overwhelmingly contrary to DA, ROIs findings, I believe a full and properly focused investigation of the suspected government perpetrators that were complicit in the LM confirmed fraud is in order along with the conduct of necessary comprehensive forensic post-award cost accounting, technical, and government property audits of the questioned MLRS, IES and production contracts. Accordingly, any new proposed investigations of DI-00-1499 and its 30 Sep 05, Supplement (DI-09-0045), of any sort should be immediately and independently conducted by the Office of the Secretary of Defense, (OSD) or by higher authority.

Declaration

I, CLARENCE N. DANIELS, do hereby declare:

I declare under penalty of perjury under the laws of the United States of America that the foregoing comments and the attached supporting documentation are true and correct to the best of my knowledge and belief.



July 23, 2009

SIGNATURE

DATE

CF, with w/o Attachments,

Hon. William E. Reukauf, Acting US Special Counsel
Hon. Eric Holder, US Attorney General
Hon. Robert Gates, Secretary of Defense
Hon. Pete Geren, Secretary of the Army
Hon. Gordon S. Heddell, DOD, Inspector General
Director, Federal Bureau of Investigation
US Attorney for the Northern District of Alabama
US Attorney for the District of Columbia
US Attorney for the District of Maryland
US Attorney for the District of Virginia
Government Accountability Office, Fraud-Net
DOJ, National Procurement Fraud Task Force
US Office of Personnel Management, Inspector General
GSA, Inspector General

8 July 2004

MEMORANDUM FOR RECORD

SUBJECT: Retrofit Clarification Meeting with Tony Vollers,
Legal Assistant

1. On 8 July 2004, Tony Vollers, David Salinas, Clarence Daniels and Bobbie Jordan met to discuss the issues surrounding non-conforming M270A1 launchers awarded under contract DAAH01-98-C-0138 and DAAH01-00-C-0109. The discussion also included the acquisition of 23 each IWIU's awarded by modification P00099 under DAAH01-00-C-0109 (Lockheed Martin) and efforts under proposed letter contract W31P4Q-04-C-0144 (Harris Corp.) for 15 each IWIU's.
2. After all parties reviewed the complaint package Tony Vollers voiced the following concerns:
 - a. There appears to be a duplication of effort between the two contracts - modification P00099 under DAAH01-00-C-0109 awarded to Lockheed Martin and letter contract W31P4Q-04-C-0144 to be awarded to Harris Corp.
 - b. Mr. Vollers stated that he would like to take a look at the two efforts to ensure we are not obtaining a duplication of effort.
 - c. Mr. Vollers would also like to meet with George Handley to find out why we do not have copies of the reports that identify whether or not Lockheed Martin met the requirements outlined in the contract to repair defects at no cost to the government.
3. All other actions would be tabled until Mr. Vollers can perform his review.

/s/

BOBBIE TERRY JORDAN
Multiple Launch Rocket
System Division

Lockheed Martin Vought Systems
P.O. Box 650003 Dallas, TX 75265-0003
Telephone 972-603-1000



3-19210/1998L-5320

To: Commander
U.S. Army Aviation and Missile Command
Redstone Arsenal, Alabama 35898-5000

AMSAM-AC-TM-C/Mr. Clarence Daniels

Contract DAAH01-94-C-A005, FY 95 Production
Warranty Claim Action

- 1 Lockheed Martin Corporation Vought Systems has received the following warranty claim actions. These items submitted against the subject contract will be counted toward the threshold for expected failures:

<u>WCA</u>	<u>P/N</u>	<u>S/N</u>	<u>NOMENCLATURE</u>
W1800259	13030280	621655	Short No Volt Test (SNVT)
W1800260	13033220	231325	Motor, Servo-Azimuth

- 2 Please ship the following items to the address below:

Lockheed Martin Corporation Vought Systems
Arkansas Highway 205
Highland Industrial Park
East Camden, AR 71701
Attention: Sheila Walker

- 3 Should you have any questions regarding this matter, please contact the undersigned at (972) 603-2664.

Sincerely,

A handwritten signature in cursive script that reads "Mark W. Hansard".

M. W. Hansard
Contract Administrator - MLRS

cc: AMSAM-AC-TM-C/Ms. K. James, PCO
SFAE-MSL-ML-MG/Mr. A. Pratte
DCMC Lockheed Martin Vought Systems/Ms. D. L. Williams, ACO



DEPARTMENT OF THE ARMY
UNITED STATES ARMY AVIATION AND MISSILE COMMAND
REDSTONE ARSENAL, ALABAMA 35898-5000

December 4, 1998

REPLY TO
ATTENTION OF

Field Data Division

SUBJECT: Contract DAAH01-94-C-A005, Warranty Claim Actions W18L00259 and W18L00260

Ms. Kathy Verrijce
Manager MLRS Production Programs
Lockheed/Martin/Vought Systems
PO Box 650003, MS-MC09
Dallas, TX 75265-0003

Dear Ms Verrijce:

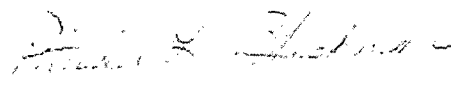
The warranted items, SNVT SN621655 and AV Servo Motor SN 231325, on the subject claims were returned to your repair facility per your request. Since a delay in return of the items to the Army could have an adverse affect on the combat readiness and/or efficient logistical support of the system, it is imperative that the items be repaired/replaced and returned as soon as possible.

In order for this office to better monitor and plan for the return of these items, it is requested that your office provides and estimated date of return for each of the items. It is also requested that actions be taken by Lockheed/Martin/Vought Systems to assure compliance with these return dates.

Again, should there be any disagreement as to the applicability of the warranty provisions of this contract to the item contained herein, or should there be any other reason which would deter the contractor from expeditiously proceeding under the warranty provisions, the contractor shall immediately notify the PCO and apprise him/her of the circumstances related thereto.

The point of contact in the MICOM Customer Interface Team is
Mr Billy D. Medlock at 256-842-7986.

Sincerely,


KATHLEEN B. BIDDLECOMBE
Chief, Customer Interface Team

CF:
PCO - AMSAM-AC-CBCA, Mr. James Ganoe
CAS - Mr. Randy Sanders, DCMC

requirement was for both Lockheed Martin "Contractor Logistic Support, (CLS)" and "Contractor Field Technicians, (CFT) for on-site, co-located support of the M270A1 Field Artillery units deployed in Iraq.

Call me if you have any questions or if further documentation is required or desired.

Best Regards,
Clarence N. Daniels

/S/

Contract Specialist
256 876-8980

-----Original Message-----

From: Daniels, Clarence N CIV USA AMC
Sent: Thursday, July 16, 2009 5:53 PM
To: Parise, Robert J CIV USA
Cc: Rosen, William Mr CIV USA AMC; 'tbiggs@osc.gov'; 'hotline@dodig.mil'; 'fraudnet@gao.gov'; Beam, Dayn T CIV USA AMC; Baddley, Laura L CIV USA USACIDC; Allen, Fred W CIV USA AMC; 'OIGHotline@opm.gov'; 'oversight@opm.gov'; Barna, Stephanie A SES CIV USA OGC; Johnson, Cassandra T Ms CIV USA OGC; 'fraudnet@gsa.gov'; 'npftf@usdoj.gov'; Myles, James R MG MIL USA AMC; 'inspector.general@usdoj.gov'; 'inspector.general@eeoc.gov'; 'criminal.division@usdoj.gov'; Daniels, Clarence N CIV USA AMC
Subject: MLRS, M270A1 and HIMARS non-conforming launcher deployments to Iraq/Kuwait during Operation Iraqi Freedom. (UNCLASSIFIED)

Classification: UNCLASSIFIED
Privileges: NONE

Mr. Parise,

Reference our recent interview concerning the acceptance, fielding, and tactical deployment of non-conforming, unsafe and defective MLRS, M270A1 launchers into a combat zone.

The attachment and the email record shown below is forwarded for your consideration in reference to DA,ROIs concerning OSC whistleblower case files DI-00-1499 and DI-09-0045. MLRS, M270A1 production contract no. DAAH01-00-C-0109 (CLIN 0324) contained the requirement for the in theater tactical deployment of M270A1 launchers to Iraq/Kuwait during Operation Iraqi Freedom as identified in the email below.

There has been positively no credible evidence to date produced by Lockheed Martin or included in the DA,ROIs of DI-00-1499 that catastrophic safety hazards and severe launcher tactical operational flaws delineated in the attached Lockheed Martin SAR as reviewed and commented on by Mr. Gary Indihar, (AMCOM Safety) in Oct of 2002, had been remedied or properly mitigated in the least BEFORE or during the conduct of said deployment of both MLRS, M270A1 and HIMARS launchers during the conduct of tactical operations in support of Operation Iraqi Freedom.

Call me if you have any questions or if further documentation is required.

Best Regards,
Clarence N. Daniels

/S/

M270A1 Production Staff Call VTC

05 November 2003

(Pre-VTC Status)

AMCOM Attendees: Bramlett, Arnold, McCulloch, Holder, Salinas, Dove, Baites,
(29 Oct 2003 Kessler, Kirkhuff, Rabb, Spickard, Yanulavich, Bridge, Pettit,
Telecon) Fitzgerald, Stewart

LMMFC (Dallas) Attendees: Deam, Avery, Wilson, Pottinger, Tune, McPherson,
(29 Oct 2003 Hudson
Telecon)

LMMFC (Camden) Attendees: None
(29 Oct 2003
Telecon)

Subject: Launcher Deliveries

Status: a. M270A1 Launchers For Korea

- As of Monday, 03 November, 2003, Korean Launcher AFL 3004 (4AA1081) Was In Assembly Station 3.
- b. As of Monday, 03 November, 2003, October Launchers 0142 (4AA0146), 143 (4AA0354), 144 (4AA0097), 145 (4AA0104), 147 (4AA0048) and 148 (4AA0584) Had Been Sold.
- c. As of Monday, 03 November, 2003, November Launcher 129 (4AA0720) Was In PUT. November Launcher 132 (4AA0109) Was In Assembly Station 3. November Launchers 146 (4AA0115), 149 (4AA0393) and 150 (4AA0599) Were In Assembly Station 2. November Launcher 135 (4AA0549) Was In Assembly Station 1.

Subject: Upcoming Events

Status: The Following FCAs, IPRs, PDRs, CDRs, Etc. Are Scheduled:

- System Level Delta FCA For SAASM and V.24 – 06 November, 2003 At Dallas
- Next Program IPR – 19-20 November, 2003 In Camden. 18 November, 2003 Has Been Reserved For Sidebar Meetings. In Response To The Inquiries At Last Week's VTC Relative To the Potential Adverse Impact of the End of Basic M270 To Future M270A1 FMS, Etc. Sales, the Late Afternoon of the 18th Is Being Devoted To the Discussion of This Issue.

Parts Will Be Available For Contingency Use. By 30 January, 2004, All Verification Testing Is To Be Complete, and Harris and L-3 Are To Receive Authorization To Begin Production Efforts. First LRUs Utilizing Gray Market Parts Are To Begin To Be Delivered By 19 June, 2004. L-3 Reports That All EMI And Temperature Tests Have Been Successfully Completed. Harris Is Testing Gray Market PPC2EPs In Both the LIU and IWIU Application. LRU-Level Temperature And Vibration Testing Has Been Successfully Completed. EMI Tests Are Ongoing On The IWIU, Successfully Completed On the LIU. System Testing (MIF Console and On Launcher) Of LRUs Equipped With Gray Market EPs Began On 27 August, 2003, At LMMFC. LMMFC System Testing Was Successfully Completed On 22 October, 2003.

Subject: Excessive Static Torque In Azimuth and Elevation Hydraulic Drive Motors

Status: Vickers Has Recently Experienced A Large Decrease In the Percentage of Motors Meeting Frictional Requirements the First Time They Are Tested After Fabrication. Investigation Efforts Determined That Problems Were Being Caused By Surface Quality Issues On the Motor Yoke. Vickers Is Well On the Way To Resolving Issues With the Yoke, and Production Yields For Motors Are Again High.

Subject: Damage To Connector P3 Of the W325 Electrical Cable

Status: a. July, 2003, and Subsequent Production Launchers Have These Changes Installed At the Time of Sale. LMMFC's Mark Evans Is In the Process Of Determining When Enough Extra Adapter Plates Will Be Available To Support Rework of Fielded Launchers. It Has Been Recently Determined That the W325P2 Connector Clocking Can Make Installation Difficult. LMMFC Has Prepared Both A Production Design Change and A Rework Procedure To Allow Re-clocking In the Field.

Subject: Launcher Remanufacture Meeting

Status: LMMFC Camden, DDRT and RRAD Personnel Have Essentially Agreed To Use The RRAD/DDRT In-Process Inspection Sheets (Which Were Supplied To LMMFC Camden By Bruce Reed), With Minor Alterations, To Govern the Acceptability of RRAD Remanufactured Items. Subject To the Inspection of Specific Items, If and As Requested By LMMFC Camden Quality, It Is Intended That the Completed and Signed Inspection Sheets Will Be Considered To Be Certificates of Conformance. A Sidebar Meeting On This Subject Is Planned For the Upcoming November IPR In Camden.

Subject: M270A1 Launcher Software PCA/FCA/PCI

Status: Software PCA/FCA/PCI Was Successfully Conducted On 02-03 April 2003. Twenty (20) CSCIs Were Conditionally Approved. The WIM CSCI Will Be Reevaluated. Forty-two (42) Action Items Were Taken, and Continue To Be Worked. The Incident In Which Several Rockets Launched, During A WSMR Test, After the GDU Screen Froze (With Resulting Loss of Operator Control) Is Still Being Investigated. Martin Delaplaine Is LMMFC's POC For This Issue. Martin Has Prepared A White Paper On The Subject Which Is In LMMFC Internal Review. LMMFC's Rick Skuza and Jodat Vu Have Been Unable To Develop A Methodology To Subject A GDU To Continuous Fire Mission Processing, With LIDAS In the Loop, and Have Been Unable To Duplicate The Failure Mode. Martin's Stated Intent Is To Update the White Paper With Recent Events (Example: Successful GMLRS Flight Test) and Provide It To PFRMS.

MEMORANDUM FOR OFFICE OF SPECIAL COUNSEL, DISCLOSURE UNIT,
ATTN: Mrs. Malia Myers Paslawski 1730 M STREET, NW SUITE 201,
WASHINGTON, DC 20036-4505.

Subject: *Re, DI-00-1499*, Additional documentation concerning the urgency for immediate Government corrective actions in regard to my previous complaint of alleged AMCOM Safety Office and Multiple Launcher Rocket System (MLRS), Project Manager's office (PMO) management criminal negligence and acquiescent acts concerning MLRS, PMO management recommendations for the continued delivery, acceptance, and deployment of unsafe and non-conforming MLRS, M270A1 Launchers known to exhibit catastrophic operational and safety hazards that present serious health and safety risks to end users and Government property.

Recent Developments: The recent catastrophic safety incident as described in the 5 Nov 03, PMO/LMMFC Staff call Video Telephone Conference (VTC), (attached) has reaffirmed the imminent danger of operating the M270A1 launcher during tactical and live-fire exercises, the LMMFC M270A1, LRIP III SAR Hazard Control Matrix (attached), frequently of catastrophic safety incident occurrence is as bad or worse than estimated. These M270A1 launchers have been known to the Government to exhibit these catastrophic operational and safety hazards for almost three years by AMCOM, Safety, MLRS, PMO and LMMFC-D management offices. The previously delivered and fielded M270A1 launchers that exhibit these unmitigated safety hazards are not safe for live-fire training or tactical use.

Additional Supporting Data:

Attachment 01, Excerpts from 5 Nov 03 PMO/LMMFC Staff call VTC, page 8 of 11, last paragraph.

Attachment 02, Copy of LMMFC M270A1 LRIP III SAR Hazard Control Matrix, dated, 5 Mar 02.

Conclusion: The following actions should be immediately taken by the Government as a minimum:

1. All previously delivered and fielded M270A1 launchers with unmitigated safety hazards as described in the attached LMMFC M270A1, LRIP III SAR Hazard Control Matrix should be immediately restricted from use in all tactical and live-fire exercises.
2. All future Government deliveries and acceptance of M270A1 launchers from LMMFC-D should be suspended immediately pending the results of the investigation by the Government of the recent M270A1 inadvertent rocket firing incident.

3. Stop work orders and cure notices should be issued under all current M270A1 hardware production contracts pending the results of the investigation by the Government of the recent M270A1 inadvertent rocket firing incident.

Your office's immediate action is requested. Questions or/and comments concerning the content or any supporting documents referenced or inferred in this memorandum should be addressed to the undersigned at (256) 876-8980 (work) or (256) 830-1967 (home).

Attachments

Clarence N. Daniels



Contract Specialist

CF: L. Baddley, Army CID
DCIS, Fraudnet

AMSAM-AC-TM-C

29 Jun 2007
Mr. Daniels/6-8980

MEMORANDUM FOR DEPARTMENT OF DEFENSE, INSPECTOR GENERAL,
DEFENSE HOTLINE, THE PENTAGON, FAX NO. (703) 604-8567.

THRU: OFFICE OF SPECIAL COUNSEL, DISCLOSURE UNIT,
ATTN: Mrs. Malia Myers Paslawski, 1730 M STREET, NW SUITE 201,
WASHINGTON, D.C. 20036-4505.

Subject: [*Reference OSC file no. DI-00-1499*], Suppression and attempted concealment of latent and unmitigated catastrophic Safety hazards of contractual non-conforming contractor serviced and maintained M270A1/HIMARS Launchers and Fire Control Systems (FCS) fielded with the 2nd/20th, Field Artillery Battalion, Fort Hood, TX by perfidious past and present US Army Aviation and Missile Command (AMCOM), and Multiple Launch Rocket System (MLRS), Program Executive office (PEO) management officials.

Catastrophic M270A1/HIMARS Equipment Losses: Government and Contractor false and misleading statements concerning the alleged destruction by fire and total loss of MLRS M270A1 Launcher Serial Number (SN): 4AA01053 and Weapon Interface Unit (WIU/IWIU) SN: 580713 fielded with the 2nd/20th, Field Artillery, Fort Hood, TX to effect the concealment and waiver of Government rights to legally enforceable indemnification for Government equipment losses valued at more than \$3 million. Nineteen (19), each MLRS M270A1/HIMARS Launchers including Launcher SN: 4AA01053 and WIU/IWIU SN: 580713 were under de-facto contract responsibility and accountability with a contractor embedded co-located Field Service Technician (FSR), pursuant to the terms and conditions of fixed price Life Cycle Contractor Support (LCCS), contract W31P4Q-04-C-0076 with Lockheed Martin Missiles and Fire Control Systems, (LMMFC) at the alleged time of the equipment loss as further described in the Attachments hereto.

High Mobility Artillery Rocket System, (HIMARS) production contract number DAAH01-03-C-0005 total loss and Government replacement without legally sufficient consideration of one government furnished HIMARS XM1140 Carrier Vehicle valued at \$359K that was irreparably damaged during LMMFC performance of Production Unit Testing at the Camden, AR test track facility on 22 Sep 2006.

Pursuant to the current terms and conditions of the both the LCCS and HIMARS contract Statements of Work (SOW), and/or Government Property clauses, included in the contracts, the contractor is generally responsible for all loss, damage or destruction of government property under its possession and control. This clause includes required compensation to the Government in the form of a reduction to the total contract price equal to the amount of actual government property lost, damaged, or destroyed while under the possession and control of LMMFC.

Past Catastrophic Launcher/Equipment Losses: Allegedly there have been at least two additional M270A1/HIMARS Launchers fielded and deployed since 2003 that were totally destroyed by fire in CONUS and OCONUS with apparently no documented causes or formal safety investigations performed or formally documented by the Government.

PEO and AMCOM management officials continue to routinely and inexplicably approve highly questionable LMMFC self serving requests for contract modifications that have either eliminated or degraded critical MLRS weapon system safety and tactical operational performance without adequate safety mitigation or legally sufficient consideration to the Government in return for reducing or eliminating negotiated and contractually mandated system safety and tactical performance requirements.

Additional Supporting Documents:

Attachment 01, Emails discussing the heretofore unexplained damage and total loss of MLRS M270A1 Launcher serial number (SN): 4AA01053 and Weapon Interface Unit (WIU/TWIU) SN: 580713.

Attachment 02, Excerpts from contract number DAAH01-04-C-0076, SOW and Appendix "B" requiring contractor performed life cycle maintenance and assignment of a LMMFC embedded and co-located contractor Field Service Technician (FSR) for 19 each MLRS M270A1 Launchers of the 2nd/20th, Field Artillery, BN, Fort Hood, TX.

Attachment 03, Modifications P000119 and P000124 from contract number DAAH01-03-C-0005 total loss and replacement of one government furnished HIMARS XM1140 Carrier Vehicle that was irreparably damaged during LMMFC performance of Production Unit Testing at the Camden, AR test track facility on 22 Sep 2006.

Conclusion: Based on the unexplained and undocumented M270A1/HIMARS Launcher and equipment losses occurring since their initial conditional acceptance and fielding by the Army in 2002 and the imminent probability of additional catastrophic events, the Army should conduct an immediate independent Safety audit of all fielded non-conforming M270A1/HIMARS Launchers and FCSs. These Launchers were delivered under MLRS production contracts DAAH01-98-C-0138 and DAAH01-00-C-0109, conditionally accepted without legally sufficient consideration to the Government, fielded with unmitigated safety hazards, and callously deployed during Operation Iraqi Freedom. This independent Safety audit of the identified MLRS systems should be immediately implemented for the reasons delineated herein unless my previous MLRS system safety related allegations specified in Office of Special Counsel file no. DI-00-1499 have been conclusively dismissed by the appropriate governmental investigative agencies or legally mitigated.

Questions and/or comments concerning the content of this memorandum or any supporting documents referenced or inferred herein may be addressed to the undersigned at my home address or (256) 830-1967.

I hereby certify by my legal signature below, that to the best of my knowledge and belief, all of the information contained in or attached to this memorandum is true, correct, complete, and made in good faith.

Sincerely,



Clarence Nelson Daniels

CF w/o attachments:
Honorable Robert Cramer
Honorable Richard Shelby
Secretary of Defense
Senate Armed Services Committee
House Armed Services Committee
DODIG, Civilian Reprisal Investigations
DOJ, Criminal Division/Fraud Section
Under Secretary of Defense (AT&L)
Secretary of the Army
GAO, FraudNet
US Dept. of Justice, Public Integrity Section
Commander, US Army Materiel Command
Commander, US Army AMCOM, LCMC

Daniels, Clarence N CIV USA AMC

From: Snyder, James M ACQ
Sent: Monday, May 05, 2003 12:40 PM
To: Daniels, Clarence N ACQ
Cc: Jones, Deisy R MAJ ACQ
Subject: FW: COR Assignment

Clarence,

Please prepare a COR delagation for all three contracts for my signature. You should have a copy of Myrick's in your IPDS file for an example. Thanks, Jim S

-----Original Message-----

From: Jo Barnette [mailto:Jo.Barnette@msl.army.mil]
Sent: Monday, May 05, 2003 8:32 AM
To: deisey.jones@redstone.army.mil; james.snyder@redstone.army.mil
Subject: Fwd: COR Assignment

I tried to send this to you last week but apparently I had an incorrect E-mail address for both of you. Hopefully you'll get this.

Thanks,
Jo Barnette

>>> Jo Barnette 5/2/2003 11:14:55 AM >>>
Major Jones,

Please prepare a Contracting Officer designating Maj Tom Doss to be the COR for the following contracts in lieu of LTC Paul Myrick and provide this office with a copy of the letter.

Thanks,
Jo Barnette

>>> David Shelton 5/2/2003 10:33:46 AM >>>

LTC Paul Myrick is being replaced by Maj Tom Doss in theater, Operation Iraq Freedom, and Maj Tom Doss needs to be assigned as the in theater COR for the following contracts.

DAAH01-00-C-0109 (CLIN 0324)
DAAH01-00-C-0151 (HIMARS)
DAAH01-02-C-0039 (IPDS)

Information on Maj Tom Doss:

DOB: [REDACTED]

POB: [REDACTED]

SSN: [REDACTED]

Maj Doss Can be reached at the following:

Voice: 011-965-468-4634

Fax: 011-965-468-4633

David E. Shelton
Precision Fires Project Office
SFAE-MSL-PF-SS-LGS
(256) 876-4646 DSN 746-4646
Fax (256) 842-2614 DSN 788-2614

1. Background:

a. Multiyear II Contract (MY II): The MLRS Project Office had a requirement in fiscal years FY89-FY93 which met the minimum requirements for a second multiyear contract for production of both launchers and air vehicles. A Congressional requirement in Section 107 of the FY89 Defense Authorization Act mandated that in order to award a multiyear contract, the negotiated price, with adjustments for differences in quantity, inflation, and configuration, must demonstrate a 10% savings over current negotiated contracts. The contract awarded was a five year multiyear firm fixed-price with an economic price adjustment provision (FFP w/EPA) procurement with economic order quantities for advance materials. The initial contract award was for \$941,960,820.

b. Advance Materials: During the planning phase of the MY II contract the purchase of "car load lots" of advance material was considered to be the most effective method for reducing the price of the hardware. The savings on the Multiyear I contract awarded six years earlier was the basis for this decision. On the MY II contract there was a validated savings reported to the Congress of 13.8% for the Multiyear approach over annual buys. Almost all of the validated savings was associated with the advance materials. The eventual agreement reached was to have LTV purchase advance materials in the most economical manner with the subcontractors and suppliers, and maintain the material without additional cost to the government until the material was introduced into work in process.

c. Progress Payments: The regulations in effect at the time of MY II negotiation restricted the percentage amount of progress payments which could be allowed to a large business. Loral Vought Systems (LVS) did not have a problem with the ordinary performance on the multiyear, but was not willing to carry the expense of the advance materials (some for as long as 6 years) without an increase in the profit rate to a point not acceptable to the contracting officer. A compromise was reached through an arrangement where only the advanced materials were accepted on a Certificate of Conformance (COC), stored as government property but maintained by the contractor's materials procedures, and reported to the Procuring Contracting Officer on a semi-annual basis. The contractor was authorized to voucher (bill) 100% of the advance materials cost at the time that it was delivered by the subcontractor or vendor. Delivery and payment to LVS was effected on the COC. It is calculated that this process saved approximately \$3M in profit had the normal progress payment liquidation procedures been used. The procedure worked without any significant problems throughout the contract period of performance.

d. Value Engineering Change Proposal MI-C1450, Reduced Range Practice Rocket (RRPR): The MLRS Project Manager had a requirement from the User Community for a reduced range practice

rocket with a significantly shorter range than the practice rocket. The practice rocket essentially required the same range requirement as the tactical rocket (approximately 20 kilometers). This range requirement restricted the locations that could accommodate an MLRS rocket practice mission to White Sands Missile Range (WSMR), NM, and Grafenwoehr, Germany. The cost associated with a WSMR practice mission for annual service practice was prohibitive and the safety restrictions imposed by the German government at Grafenwoehr limited MLRS to only two firing points. Neither of these conditions were acceptable as a means of realistic training for the operators of the system. There was insufficient time to budget RDT&E funds to develop a new Reduced Range Rocket without unacceptable costs and delays. At this juncture, LVS submitted a value engineering change proposal (VECP) to develop a RRPR. Eventually, the VECP was approved and the RRPR tested and approved for production. An adroit series of changes converted a quantity of tactical rockets to practice rockets and then to reduced range practice rockets. These, and subsequently contracted RRPRs, have been delivered to the U.S. Army and to Foreign Military Sales (FMS) customers.

2. The incorporation of the subject VECP into MY II contract converted the last 6,434 Practice Rocket pods to Reduced Range Practice Rocket (RRPR) pods. The RRPR design utilizes a revised warhead structure, warhead skin, associated cabling to link the fire control system, and has no fuze. This revised configuration caused advanced materials purchased at the multiyear contract outset to become "surplus advance material". This material is of the correct configuration for the practice and tactical rockets but cannot be used on the RRPR.

3. During the initial negotiation sessions for settlement of VECP MI-C1450 in February 1995 the government's contention was that the surplus advance materials represented a government cost within the meaning of the VECP clause of the contract and should be deducted from the acquisition savings before the savings are shared. The LVS contention was that the materials in question are "good material" for practice and tactical rocket use and as such do not represent a cost; hence are not a "government cost". The MLRS Project Office and the legal advisor support the government position in writing.

4. Reduced Range Practice Rocket (RRPR) settlement details as confirmed by the contractor in a 17 April 1995 letter:

Element	Amount
Total Hardware Credits	
including Advance Mat'l	(\$83,812,217)
Advance Material	<u>\$10,183,366</u>
Production Credits	(\$73,628,851)
Production Debits	\$44,700,521
Manufacturing Savings	(\$28,928,330)
Contractor Dev & Imp	<u>4,800,000</u>
Acquisition Savings	(\$24,128,330)

Government Cost - Testing	\$1,068,721
Government Cost - Advance Mat'l	<u>931,279</u>
Net Acquisition Savings	(\$22,128,330)
Contractor Share	\$11,064,165
Contract Reduction in Performance	(\$24,128,330)
Payment of Contractor Share	<u>\$11,064,165</u>
Net Contract Reduction	(\$13,064,165)
Less amount already deobligated	<u>\$ 5,399,958</u>
Further Contract Reduction	(\$ 7,664,207)

5. A dichotomy between the contractor's confirmation of negotiations and the contract specialist's record of negotiation relates to the lump sum settlement amount. The contractor maintains a position that it is entitled to a lump sum settlement of \$2,110,000 and the contract specialist contents that the advance material of \$8,000,000 was surplusd by the VECP, thus offsetting the lump sum amount.

6. The negotiations for settlement of the subject VECP are stalemated by two key factors which effectively block an agreement. All other aspects of the settlement have been agreed upon. The two factors at issue are (a) the advanced materials and (b) the manufacturing rights for future sales to FMS or third party sales.

7. In the event that a requirement for tactical or practice rockets should develop in the future for either an FMS requirement or for a U.S. requirement, the surplusd advanced materials would constitute an available bargain to the U.S. government. The materials were purchased some 6 years ago and would enjoy not having escalation applied for the approximately 10 years that the materials have been in storage. Additionally the materials were purchased in "car load lots", obtaining an economy of scale that is no longer available. The shelf life of the advance materials does not expire in the foreseeable future. As part of any negotiated settlement with LVS on the VECP settlement an extension to the no cost to the government storage agreement for an additional 2 to 5 years will be negotiated. This will assure that the surplusd materials are available at reduced cost if a requirement develops within the foreseeable future.

H-XX License Rights for VECP MI-C1450R1

Technical data pertaining to items, components or processes developed exclusively at private expense, which the Government would be entitled to have furnished with "Limited Rights" as defined in paragraph (a)(15) of the clause at 252.227-7013, shall, at no additional cost to the Government, be furnished with the following additional right:

The right to disclose or provide the technical data, in whole or in part and in any manner, for Government Purposes only, and to have or permit others to do so for Government Purposes only, to any U.S. person or corporation that has executed a Standard-Non-Disclosure Agreement which establishes third party beneficiary status in the contractor. If the recipient of the technical data has executed the Standard Non-Disclosure Agreement, the Contractor shall have no claim or right of action against the Government for damages related to misuse or unauthorized disclosure of the data. For purposes of this clause, "Government Purposes" shall include competitive procurement in the United States, but do not include any rights to have or permit others to use technical data for commercial purposes, or for purposes for foreign manufacture or foreign procurement. Contractor shall have, and shall retain, all commercial and foreign rights including Foreign Military Sales (FMS).

All technical data furnished to the Government that is marked with "Limited Rights" legend shall be marked with the following additional statement:

"In addition to the "Limited Rights" specified in paragraph (a)(15) of the clause at 252.227-7013 of the contract listed above, the Government has "License Rights" as specified in Clause H-XX of said contract."

MEMORANDUM FOR RECORD

SUBJECT: Settlement Discussion with the MICOM PARC, Mrs. L. Marlene Cruz in regard to Value Engineering Change Proposal (VECP) MI-C1450, Reduced Range Practice Rocket (RRPR)

1. A meeting was held with the PARC on 27 June 1995 to discuss the subject negotiation and the implications of the material obsolescence issue. Mr. Jerry McMurry, James Brannon, and the undersigned were present at the discussion.

2. Background:

a. Multiyear II Contract (MY II): The MLRS Project Office had a requirement in fiscal years FY89-FY93 which met the minimum requirements for a second multiyear contract for production of both launchers and air vehicles. A Congressional requirement in Section 107 of the FY89 Defense Authorization Act mandated that in order to award a multiyear contract, the negotiated price, with adjustments for differences in quantity, inflation, and configuration, must demonstrate a 10% savings over current negotiated contracts. The contract awarded was a five year multiyear firm fixed-price with an economic price adjustment provision (FFP w/EPA) procurement with economic order quantities for advance materials. The initial contract award was for \$941,960,820.

b. Advance Materials: During the planning phase of the MY II contract the purchase of "car load lots" of advance material was considered to be the most effective method for reducing the price of the hardware. The savings on the Multiyear I contract awarded six years earlier was the basis for this decision. On the MY II contract there was a validated savings reported to the Congress of 13.8% for the Multiyear approach over annual buys. Almost all of the validated savings was associated with the advance materials. The eventual agreement reached was to have LTV purchase advance materials in the most economical manner with the subcontractors and suppliers, and maintain the material without additional cost to the government until the material was introduced into work in process.

c. Progress Payments: The regulations in effect at the time of MY II negotiation restricted the percentage amount of progress payments which could be allowed to a large business. Loral Vought Systems (LVS) did not have a problem with the ordinary performance on the multiyear, but was not willing to carry the expense of the advance materials (some for as long as 6 years) without an increase in the profit rate to a point not acceptable to the contracting officer. A compromise was reached through an arrangement where only the advanced materials were accepted on a

Certificate of Conformance (COC), stored as government property but maintained by the contractor's materials procedures, and reported to the Procuring Contracting Officer on a semi-annual basis. The contractor was authorized to voucher (bill) 100% of the advance materials cost at the time that it was delivered by the subcontractor or vendor. Delivery and payment to LVS was effected on the COC. It is calculated that this process saved approximately \$3M in profit had the normal progress payment liquidation procedures been used. The procedure worked without any significant problems throughout the contract period of performance.

d. Value Engineering Change Proposal MI-C1450, Reduced Range Practice Rocket (RRPR): The MLRS Project Manager had a requirement from the User Community for a reduced range practice rocket with a significantly shorter range than the practice rocket. The practice rocket essentially required the same range requirement as the tactical rocket (approximately 20 kilometers). This range requirement restricted the locations that could accommodate an MLRS rocket practice mission to White Sands Missile Range (WSMR), NM, and Grafenwoehr, Germany. The cost associated with a WSMR practice mission for annual service practice was prohibitive and the safety restrictions imposed by the German government at Grafenwoehr limited MLRS to only two firing points. Neither of these conditions were acceptable as a means of realistic training for the operators of the system. There was insufficient time to budget RDT&E funds to develop a new Reduced Range Rocket without unacceptable costs and delays. At this juncture, LVS submitted a value engineering change proposal (VECP) to develop a RRPR. Eventually, the VECP was approved and the RRPR tested and approved for production. An adroit series of changes converted a quantity of tactical rockets to practice rockets and then to reduced range practice rockets. These, and subsequently contracted RRPRs, have been delivered to the U.S. Army and to Foreign Military Sales (FMS) customers.

e. The incorporation of the subject VECP into MY II contract converted the last 6,434 Practice Rocket pods to Reduced Range Practice Rocket (RRPR) pods. The RRPR design utilizes a revised warhead structure, warhead skin, associated cabling to link the fire control system, and has no fuze. This revised configuration caused advanced materials purchased at the multiyear contract outset to become "surplus advance material". This material is of the correct configuration for the practice and tactical rockets but cannot be used on the RRPR.

2. During the initial negotiation sessions for settlement of VECP MI-C1450 in February 1995 the government's contention was that the surplus advance materials represented a government cost within the meaning of the VECP clause of the contract and should be deducted from the acquisition savings before the savings are shared. The LVS contention was that the materials in question are "good material" for practice and tactical rocket use and as such do not represent a cost; hence are not a "government

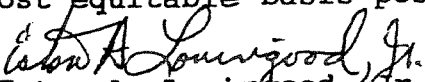
cost''. The MLRS Project Office and the legal advisor support the government position in writing.

3. The settlement of the subject VECP is stalemated by two key factors which effectively block an agreement. All other aspects of the settlement have been agreed upon. The two factors at issue are (a) the advanced materials and (b) the manufacturing rights for future sales to FMS or third party sales.

4. The desire to reach a negotiated settlement, as opposed to resolution through a unilateral determination, is predicated on an ambiguity contained in modifications P00111 and P00160 which failed to include a value for the surplus advanced materials in the not to exceed (NTE) value for the government cost to implement the VECP. The omission of the value for advance materials was deliberate (based on discussions with the contract specialist involved) since an exact value could not be established at that time. The incorporation of the advance material value was deferred by mutual agreement until later. The deferment agreement was not reduced to writing and is a area of discord in this settlement. This ambiguity is now one of the main tenants of the disagreement between the Contracting Officer and the contractor (LVS).

5. In the event that a requirement for tactical or practice rockets should develop in the future for either an FMS requirement or for a U.S. requirement, the surplus advanced materials would constitute an available bargain to the U.S. government. The materials were purchased some 6 years ago and would enjoy not having escalation applied for the approximately 10 years that the materials have escaped. Additionally the materials were purchased in car load lots obtaining an economy of scale that is no longer available. The shelf life of the advance materials does not expire in the foreseeable future. As part of any negotiated settlement with LVS on the VECP settlement an extension to the no cost to the government storage agreement for an additional 3 to 5 years will be negotiated. This will assure that the surplus materials are available at reduced cost if a requirement develops within the foreseeable future.

6. The meeting was concluded with agreement that the MLRS PMO would be contacted by the Contracting Officer to "revisit" the advance materials obsolescence issue, and if no adjustments were forthcoming in the PMO's position, then negotiations would proceed to settle the VECP on the most equitable basis possible.


Eston A. Lovingood, Jr.
Contracting Officer

29 June 1995
Mr. Lovingood/eal/6-7347

MEMORANDUM FOR RECORD

SUBJECT: Settlement Discussion with the MICOM PARC,
Mrs. L. Marlene Cruz in regard to Value Engineering Change
Proposal (VECP) MI-C1450, Reduced Range Practice Rocket (RRPR)

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Eston A. Lovingood, Jr.
Eston A. Lovingood, Jr.
Contracting Officer

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SECTION I. BUSINESS CLEARANCE MEMORANDUM

15 December 1994

U.S. Army Missile Command
ATTN: AMSMI-AC-CBCA
Redstone Arsenal, AL 35898-5280

Competitive:	<u> </u>	Pre-Negotiation:	<u> X </u>	Total:	<u>(\$ 19,345,970)</u>
Non-Competitive:	<u> X </u>	Post-Negotiation:	<u> </u>	Total:	<u>(\$13,107,694)</u> **See PostBOM for Breakout.

Contractor:	Contract:
Loral Vought Systems	DAAH01-89-C-0336
1701 W. Marshall Drive	
Grand Prairie, TX 75051	

Item Description: Definitization of modifications P00111 and P00160 which incorporated Value Engineering Change Proposal (VECP) MI-C1450 entitled "Reduced Range Practice Rocket (RRPR)".

Pricing Structure:	Pre-Negotiation	Post-Negotiation
Acquisition Savings	<u>(\$26,010,309)</u>	<u>(\$24,128,330)</u>
Government Cost-Testing	<u>\$ 1,068,721</u>	<u>\$ 1,068,721</u>
Government Cost - Adv Matl	<u>\$11,612,911</u>	<u>\$ 1,018,336</u>
Net Acquisition Savings	<u>(\$13,328,677)</u>	<u>(\$22,041,273)</u>
LVS Share	<u>\$ 6,664,339</u>	<u>\$11,020,637</u>

Summary of Contract Change:		
Acquisition Savings	<u>(\$26,010,309)</u>	<u>(\$24,128,330)</u>
Payment: LVS Share	<u>6,664,339</u>	<u>\$12,942,677</u>
Net Contract Reduction (Government)	<u>(\$19,345,970)</u>	<u>(\$13,107,694)</u> **See PostBOM for Breakout**

Sharing Arrangement: 50/50

Sharing Period: Commence: September 1993 Finish: August 1996

Point of Contact: Contracts: Crystal Blackburn, 842-6381
 Technical: Nell Baites, 842-6271
 Steven Basham, 876-8227
 Pricing: Fred Forst, 876-8378

Preparer (Sig) Crystal Blackburn Date 15 Dec 1994 *Con CW Collection 15 Dec*

Reviewer (Sig) Eston A. Loungood, Jr. Date 16 Dec 94

PRE-BCM Approved (Sig) James Cannon Date 20 Dec 94

POST-BCM Approved (Sig) [Signature] Date 8/30/95

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JMC

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SECTION II. PreBCM Compliances

1. a. Determinations and Findings (D&F) to exclude a source (FAR 6.202 and Subpart 1.7) number was approved on _____ by _____. Attached as Exhibit _____. N/A.
- b. D&F for the Public Interest circumstances permitting other than full and open competition (FAR 6.302-7 and Subpart 1.7) number was approved on _____ by _____. Attached as Exhibit _____. N/A.
- c. A justification for other than full and open competition (see FAR 6.303) was approved on 23 May 1988.
2. Acquisition Plan (AP) Number ML1-89, Update No. 7, was approved on 28 June 1989 by J.R. Sculley, Assistant Assistant Secretary of the Army (Research, of the Army (Research, Development, and Acquisition)). This acquisition is in conformity with the approved AP.
3. This acquisition was not synopsized in the Commerce Business Daily. Explanation is provided in paragraph 24.
4. Proposed services have been determined to be nonpersonal. Yes _____ No _____ N/A X.
5. The Pre-Award Disclosure Statement - Cost Accounting Practices and Certification was executed on 31 August 1992. The cognizant DCAA auditor determined that the Disclosure Statement was current, accurate and complete on 7 June 1993.
6. Written waiver of audit request was granted by the Contracting Officer. Yes _____ N/A X. (FAR 15.805-5).
7. The cognizant ACO has determined that the contractor's Estimating System is adequate at the present time.
8. The contractor has an approved purchasing system for Dallas, as determined by the ACO on 22 November 1993. The contractor has an approved purchasing system for Camden, as determined by the ACO on 01 December 1993.
9. The contractor's Material, Management, and Accounting System has been determined to be adequate by the ACO.
10. a. The contractor submitted SF1411, Contract Pricing Proposal Cover Sheet. Yes X No _____.
- b. The SF 1411s for all major subcontractors have been submitted (FAR 15.806). Yes _____ N/A X No _____.
- c. Assist audits have been requested or received for all major subcontractors. Yes _____ N/A X No _____. Explanation is provided in paragraph 24.
11. Precontract costs were approved by _____. N/A X.
12. An approved make or buy plan is on file. Yes _____ N/A X No _____. If no, explanation is provided in paragraph 24.
13. Equal Employment Opportunity (EEO) compliance has been requested or obtained. Yes _____ N/A X No _____.
14. The prospective contract has been determined to be responsible within the meaning of FAR Subpart 9.1 and is financially stable. Yes X No _____. If no, explanation is provided in paragraph 24.
15. This memorandum does not constitute resolution of contract audit in accordance with DODD 7640.2.
16. GSA Delegation of Procurement Authority (DPA) does not apply.
17. Exception to the Buy American Act has been obtained. Yes _____ No _____ N/A X. (FAR 25.102 and 25.105)

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18. Progress Payments Authorized (FAR 32.5): Customary Flexible _____, Unusual _____. If unusual, explanation and approvals are discussed in paragraph 24.
19. Certification of Independent Price Determination has been submitted by the contractor (fixed price only). Yes _____ No _____ N/A . If no, explanation is provided in paragraph 24. (FAR 3.103-1)
20. The proposed procurement has been reviewed by the Contracting Officer for Small and Small Disadvantaged Business and Labor Surplus Area Considerations. Yes _____ No _____ N/A . If no, explanation is provided in paragraph 24. (FAR 19.501)
21. Warranty Clause approval has been obtained. Yes _____ No _____ N/A . If no, explanation is provided in paragraph 24. (FAR 46.7) Does the cost-effectiveness analysis required by DFARS 246.770-7(a) indicate that the warranty provisions will be cost effective. Yes _____ No _____ N/A . If no, has a waiver been requested? Yes _____ No _____. If no, explanation is provided in paragraph 24.
22. List of Parties Excluded from Federal Procurement or Nonprocurement Programs has been checked. Yes No _____. If no, explanation is provided in paragraph 24.
23. ASA(FM) Approval/Authorization for ADP Acquisition does not apply.
24. Explanations (indicate item numbers to which explanation apply) and any other applicable compliances.

Item #3 - Per FAR 5.202(a)(11), the Contracting Officer need not synopsize if the contract action is made under the terms of an existing contract that was previously synopsized in sufficient detail to comply with the requirements of 5.207 with respect to the current contract action.

SECTION III. Summary of Key Documents

1. Contract DAAH01-89-C-0336, Modification P00111, dated 10 July 1992.
2. Contract DAAH01-89-C-0336, Modification P00160, dated 04 April 1994.
3. Contractor Cost Proposal MI-C1450D, dated 11 March 1994.
4. Updated Contractor Computer Runs, dated 22 September 1994.
5. MICOM Report of Price Analysis Number 94-0224, dated 13 September 1994 with enclosures.
6. MICOM Report of Price Analysis Number 94-0224A, dated 14 November 1994.
7. MICOM Update of Price Analysis Number 94-0224, dated 13 December 1994.
8. Technical Evaluation submitted by SFAE-MSL-ML-MG-A, dated 21 August 1994.
9. Revised Technical Evaluation submitted by SFAE-MSL-ML-MG-A, dated 17 November 1994.
10. Claim of Limited/Restricted Rights Legend, LVS letter 3-67100/94L-526, dated 14 October 1994.

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SECTION IV. PreBCM Introduction

1. Exhibits/Attachments

- a. Contract DAAH01-89-C-0336, Modification P00111
- b. Contract DAAH01-89-C-0336, Modification P00160
- c. Report of Price Analysis Numbers 94-0224, 94-0224A and updated Report of Price Analysis
- d. Technical Evaluations.
- e. Claim of Limited/Restricted Rights Legend, Letter.

2. Background

a. Procurement History - The Reduced Range Practice Rocket (RRPR) was recommended as a Value Engineering Change to the current Multi-Year Production Program (MYP II, Contract No. DAAH01-89-C-0336) in 1990. A Value Engineering Change Proposal - Concept (VECP-C No. R200) was submitted initially by LVS in December 1990, updated in August 1991 and approved by the government in September 1991. The formal VECP MI-C1450 was then submitted, and was approved in March 1992. To authorize development and implementation of the RRPR, the VECP was incorporated into the MYII Contract by contract Modification Number P00111 dated 10 July 1992 and revised by contract Modification Number P00160 dated 4 April 1994.

b. Negotiation Environment - This action will result in the defintization of contract modifications P00111 and P00160.

3. Type of Contract: This is not applicable in accordance with AFARS 1.691-3, as this is not a new requirement.

4. Source Selection: This is not applicable in accordance with AFARS 1.691-3, as this is not a new requirement.

SECTION V. PreBCM Cost Analysis

A summary comparison of the cost categories is listed below in columnar format representing the contractor's proposal, price/technical evaluation and the government's pre-negotiation objective. All the dollars shown below are the reflected savings and, therefore, will be a decrease to the overall contract price.

<u>Cost Element</u>	<u>Initial Proposal</u>	<u>Updated Proposal</u>	<u>Price/Technical Recommended</u>	<u>Government Objective</u>	<u>Notes</u>
Dallas Dir Cost	\$ 2,606,401	\$ 2,686,286	\$ 2,606,415	\$ 2,686,286	
Material	(22,659,388)	(22,594,675)	(22,718,003)	(22,718,003)	2
Matl Overhead	(842,313)	(820,653)	(803,953)	(803,953)	
Labor	24,222	195,596)	194,003)	(194,003)	3
Labor Overhead	590,711	(338,498)	(335,870)	(335,870)	
Other Dir Chrgs	(117,880)	(115,703)	(59,421)	(59,421)	4
Direct Costs	(20,398,247)	(21,378,839)	(21,504,835)	(21,424,964)	
G&A	(2,368,305)	(2,559,057)	(2,536,772)	(2,528,146)	5
Cost	(22,766,552)	(23,937,896)	(24,041,607)	(23,953,110)	
FCCOM	(31,579)	(55,012)	(59,874)	(59,874)	6
TOTAL COST	(22,798,131)	(23,992,908)	(24,101,481)	(24,012,984)	
Profit	0	0	0	0	7
PRICE	(22,798,131)	(23,992,908)	(24,101,481)	(24,012,984)	

Daniels, Clarence N CIV USA AMC

From: Daniels, Clarence N CIV USA AMC
Sent: Friday, April 17, 2009 4:27 PM
To: 'fraudnet@gsa.gov'; 'fraudnet@gao.gov'; 'inspector.general@usdoj.gov';
'inspector.general@eeoc.gov'; 'npftf@usdoj.gov'; 'hotline@dodig.mil'; 'oversight@opm.gov';
'OIGHotline@opm.gov'
Subject: FW: Army Interview concerning DA, ROIs on DI-00-1499. (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

FYI,

-----Original Message-----

From: Daniels, Clarence N CIV USA AMC
Sent: Tuesday, April 14, 2009 9:52 AM
To: Beam, Dayn T CIV USA AMC; 'Biggs, Tracy'
Cc: Baddley, Laura L CIV USA USACIDC
Subject: Army Interview concerning DA, ROIs on DI-00-1499. (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Dayn,

Thank you for your assistance, according to the OSC Rep I will be interviewed again by the Army in the near future regarding the numerous contradictory statements and false findings included in the DA, ROIs.

I am especially concerned that it appears that the Government did not take any apparent actions against LM and government personnel concerning confirmed substantial mischarges and hidden overpayments that occurred on DAAH01-98-C-0138 along with LM's illegal attempt to recoup the \$1.4 million settlement amount it agreed to for prior IES ECP mischarges. It is also fairly obvious that the LM so-called voluntary VECP development and certifications were nothing more than a longtime contrived IES ECP multi-million dollar scam for which neither LM nor government personnel have yet to be held accountable for.

Even more disturbing is that to best of my knowledge there has not been a single post-ward cost, technical, or property audit conducted by the Government on any of the questioned IES contracts since 1999.

Fortunately, I believe sufficient Government and LM contract documentation remains on file to totally refute the erroneous and unfounded false findings of the DA, ROIs.

Thanks again,
Clarence

-----Original Message-----

From: Beam, Dayn T CIV USA AMC
Sent: Monday, April 13, 2009 7:43 AM
To: Daniels, Clarence N CIV USA AMC; 'Biggs, Tracy'
Cc: Baddley, Laura L CIV USA USACIDC
Subject: RE: DI-00-1499, 30 Sep 05, \$84+ million additional allegations. (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

rence,

I will be happy to assist in any way I can. I observed LM for 11 years on the MLRS programs probe every weakness in the USG's contracting system regarding the charging of costs. I believe once they even attempted to obtain an equitable adjustment payment (to LM) for a change to the contract that LM requested. It was about to be paid by the KO until I stopped it. Because there are no "serious" consequences to the contractor for such "oversights" in making "claims" upon the USG, contractors continue many questionable (possibly illegal/contractually unauthorized) practices.

However, on specific issues and actions, I am not sure how much I might remember or can reconstruct from available documentation.

Dayn

Dayn T. Beam
Intellectual Property Law
AMCOM

-----Original Message-----

From: Daniels, Clarence N CIV USA AMC
Sent: Friday, April 10, 2009 9:53 AM
To: Biggs, Tracy
Cc: Beam, Dayn T CIV USA AMC; Baddley, Laura L CIV USA USACIDC
Subject: DI-00-1499, 30 Sep 05, \$84+ million additional allegations. (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Ms Biggs,

Regarding our conversation on 9 Apr 09, there is an additional \$20 million in the alleged sale of the so-called proprietary data rights for the production of RRRPs to the country of Japan (page 2, para., 4 of my 30 Sep 05 submission).

This illegal data rights sale in which the US Government received no benefit or consideration, was based on Lockheed's and now the DA, ROIs false certification, assertions, and findings that the so-called voluntary VECP no. 1450R1 for the RRRP was developed exclusively at Lockheed's expense when both Lockheed's and the Government's historical IES contract records of IES ECP development and data delivery clearly show that both VECP 1423P and 1450R1 for the RRRP were developed at GOVERNMENT expense under various government IES cost-reimbursable contracts.

Call me if you have any additional questions.

Clarence N. Daniels
876-8980

-----Original Message-----

From: Biggs, Tracy [mailto:TBiggs@osc.gov]
Sent: Thursday, April 09, 2009 1:55 PM
To: Daniels, Clarence N CIV USA AMC
Subject: RE: False/misleading statements in DA, ROIs of DI-00-1499. (UNCLASSIFIED)

Thank you Mr. Daniels for copying me on this e-mail. I just wanted to let you know that because the Disclosure Unit at OSC is not authorized to conduct investigations, I will not be contacting Mr. Beam directly. In fact we are only authorized to speak to the whistleblowers. As such, I will contact you regarding any additional questions I have as we go through the issues you have raised.

Thank you.

-----Original Message-----

From: Daniels, Clarence N CIV USA AMC [mailto:clarence.daniels@us.army.mil]
Sent: Thursday, April 09, 2009 2:47 PM
To: Beam, Dayn T CIV USA AMC
Cc: Biggs, Tracy; Baddley, Laura L CIV USA USACIDC
Subject: False/misleading statements in DA, ROIs of DI-00-1499. (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Dayn,

I talked with Mrs. Tracy Biggs at OSC this morning concerning the DA knowingly false statements included in the subject DA, ROIs and your 7 Sep 99 legal recommendations concerning prohibited IES contract tasks were briefly discussed.

These policy and regulatory prohibitions together with the plain negotiated IES contract language formed both the legal and alleged criminal basis for the 5 Jan 05, DOJ \$1.4 million IES contract partial ECP mischarging Settlement Agreement and are in direct opposition with , ROIs findings.

The OSC may contact you directly concerning the DA, ROIs of DI-00-1499 and your 7 Sep 99 controlling legal interpretations.

Call me if you have any questions.

Thank you,
Clarence N. Daniels
876-8980

-----Original Message-----

From: Daniels, Clarence N CIV USA AMC
Sent: Tuesday, March 17, 2009 10:19 AM
To: Biggs, Tracy
Cc: 'fraudnet@gao.gov'; 'inspector.general@usdoj.gov'; 'criminal.division@usdoj.gov'; 'npftf@usdoj.gov'; Beam, Dayn T CIV USA AMC; Baddley, Laura L CIV USA USACIDC; Myles, James R MG MIL USA AMC; Allen, Fred W CIV USA AMC; Daniels, Clarence N CIV USA AMC; oversight@opm.gov; 'inspector.general@eeoc.gov'; 'USA-ALN-WEBMASTER@usdoj.gov'; hotline@dodig.mil; cidwebmaster@belvoir.army.mil; OIGHotline@opm.gov; 'dc.outreach@usdoj.gov'
Subject: False/misleading statements and omissions found in defective DA Secretary Report of Investigation of DI-00-1499. (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Ms Biggs,

Reference my 11 Mar 09 comments on DA Secretary Report of Investigation (DA,ROI), of DI-00-1499, dated 21 Jul 08 and 5 Jan 09, respectively.

Due to the exorbitant amount of false and misleading statements and omissions of material facts included in the referenced DA, ROIs as submitted, I will be filing additional formal complaints of additional Agency misconduct through the Office of Special Counsel to include the following:

1. The statements and findings of the DA, ROIs that separate and concurrent MLRS system production related contract tasks and issues were within the authorized scopes of the referenced separate and concurrent MLRS cost-reimbursable IES contracts is false and misleading and is not in accordance with the negotiated language of the questioned IES contracts SOWs. The questioned IES contracts were expressly worded to exclusively support the fielded MLRS, M270 launchers.
2. The DA, ROIs statement that cost-type IES contracts were issued as companion contracts to concurrent fixed price MLRS production contracts is false and misleading and is not in accordance with the negotiated language of the questioned IES contracts SOWs.
3. The DA, ROIs finding that the 5@ shipped short M270A1 Fire Control Systems (FCS), under M270A1 production contract DAAH01-00-C-0109 were subsequently received at no additional cost by the Government is false. The questioned 5@ shipped short M270A1 FCSs, were not shipped to RRAD from M270A1 production contract DAAH01-00-C-0109 as the DA, ROI claims. The questioned 5@ shipped short M270A1 FCS, were actually 5@ GFE FCSs shipped from Lockheed Martin (LM), HIMARS contract DAAH01-00-C-0002 to RRAD from 16-19 Oct 02, as verified by shipment documentation provided by Mrs. D. Howe (government property administrator for LM), and Mrs. D. Williams (ACO, DCMA,LM) on 5 May 03.

The accountability for the 5@ GFE FCSs shipped to RRAD from the LM, HIMARS contract no. AH01-00-C-0002 were subsequently transferred to HIMARS contract production contract no. AH01-03-C-0005. In an effort to mask the heretofore theft of the 5@ GFE FCSs, LM requested by letter on 17 Aug 05, the PCO addition of FAR clause 52.245-2, Alternate "I", to DAAH01-03-C-0005, this request was made to a relatively new PCO and an intern assigned to DAAH01-03-C-0005 that had no knowledge of the previous "ship-short but pay in full" ruse committed between DAAH01-00-C-0109 and DAAH01-00-C-0002.

The addition of FAR clause 52.245-2, Alternate I to DAAH01-03-C-0005 would retroactively relieve LM of all liability for the loss, damage, or destruction of more than 12 million in GFP with no before-hand accountable GFP property audits or due consideration to the Government (as I alleged in my 30 Sep 05 supplement to DI-00-1499), which would include the 5@ shipped short FCSs it is still obligated to subsequently deliver at no additional cost to the Government under DAAH01-00-C-0109, which to date LM has not delivered. Moreover, the Government has no record to date of the delivery and acceptance of a no-cost delivery of the 5@ shipped short FCSs as the DA, ROI claims.

4. The DA, ROI finding that specific residual warranty spares purchased at government expense under contract DAAH01-94-C-A005, modification PZ0008, did not become property of the Government at the end of the warranty contract period is false. Paragraph A-11 of PZ0008 specifically states the same. Paragraph E-19, pages no. 45-53, of PZ0008 specifically mandates PCO notification before and after contractor initiation of warranty work and contractor use of rotatable warranty spares proposed by LM and purchased at government expense under contract DAAH01-94-C-A005. The DA, ROI finding that no mandated warranty administration was included in DAAH01-94-C-A005, modification PZ0008 is false and misleading.

5. The DA, ROI finding falsely states that voluntary VECP number MI-C-1450A1 was developed exclusively" at LM private expense. It was government funded IES, ECP contract effort that ultimately cumulated in the final delivery of MI-C-1450A1 under the ECP, DI-CMAN-80639 data item requirements of cost-reimbursable Industrial Engineering Services (IES), contract number DAAH01-92-C-0243 on 24 Nov 1993, not exclusively under contract DAAH01-89-C-0336 as the DA,

ROI finding falsely claims. The DA, ROI response to this particular allegation stands to bear witness to the unfocused shallowness of the DA, ROI investigations and the fact less supported basis of its negative determinations. In addition, government records show that several of the so-called LM voluntary VECs were approved by former MLRS, Project Manager Col. William Taylor on behalf of the Government. US Army retired Col. William Taylor was subsequently employed by LM and eventually became the LM, IES contracts manager for a time.

6. DA failure to investigate longstanding AMCOM prohibited personnel practices and whistleblower reprisals pursuant to statutory requirements of 5 U.S.C. § 1213 concerning present and former DA officials presentation of knowingly false and misleading documents and statements along with criminal obstruction in former OSC case files MA-03-1155, MA-07-1563, former MSPB, cases AT-1221-03-0896-W-1 and AT-1221-08-0015-W-1 in violation of the procedural requirements of 5 U.S.C. § 1213 and the former DA, ACCES promotion system, merit system principles of 5 U.S.C. § 2301, whistleblower law prohibiting reprisals and contempt of a former member of Congress.

Please call me if you have any questions.

Best regards,
Clarence N. Daniels

/S/

Contract Specialist
256 830-1967

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Caveats: NONE

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Caveats: NONE

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Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE

Appendix B

Mr. Clarence N. Daniels
1503 Sparkman DR NW APT: N109
Huntsville, AL 35816
March 11, 2009

Hon. William E. Reukauf, Acting US Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W.
Suite 300
Washington, D.C. 20036-4505

Dear Mr. Reukauf,

Please accept my comments to the Department of Army Secretary (DA), 5 year delinquent Report of Investigations (ROI), dated, 21Jul 08 and 5 Jan 09, of the Office of Special Counsel (OSC) \$184+ million dollar systemic fraud case file number DI-00-1499, as submitted to the OSC by the DA pursuant to statutory requirements of 5 U.S.C. § 1213(c) and (d).

The delinquent DA, ROIs were misguided, their findings are unreasonably flawed and are in no way consistent with documented facts of the case, contract law, and statutory requirements. The delinquent DA, ROIs lack or ignored the plain language of the contracts, substantial credible hard evidence, and first-hand witness statements provided by the whistleblower to the OSC over the last 8 years. The most significant of all the abhorrent DA, ROIs omissions is the recent Lockheed Martin (LM), illegal attempt to recoup through its overhead costs the \$1.4 million dollar settlement amount for previous Industrial Engineering Services (IES), contract mischarges. Despite a more than five year DA internal investigation none of the questioned IES contracts were subjected to essential forensic contract data mining, forensic post-award cost, technical, or government property audits related directly to prior confirmed LM contract mischarges, IES insidious contract cost transfers and overpayments, and covert government property misuse and theft by deception.

The delinquent DA, ROI findings are not in accordance with the plain language of the questioned contracts, lack the required forensic post-award cost accounting and government property audits that were necessary due to the enormous cost magnitude, complexity, and extended timeframes in which the crimes were committed. The DA, ROI findings also contradict both Government and Contractor legal written requirements of the questioned contracts, documented records of events and costs, and the written statements of at least one credible collaborating former LM IES contract manager and first-hand witness for the Government.

In fact, Lockheed Martin (LM), longtime systemic fraud had already been confirmed at the time the DA, ROIs were being conducted. Recent Government joint audits,

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investigations, and monetary settlements conducted and made by the Department of Justice (DOJ), Army Criminal Investigation Command (CID), Defense Contract Management Agency (DCMA), and the Defense Contract Audit Agency (DCAA) had already confirmed LM both cost-reimbursable IES and fixed price production longtime contract mischarges and fraud within and between the contracts.

Shown below are the controlling legal interpretations and applicable laws and regulations, recent Government joint audits, investigations, and monetary settlements conducted and made by the DOJ, CID, DCMA, and DCAA that confirmed LM longtime contract mischarges and fraud. Also shown are recent instances of ethical and conflict of interest violations concerning the ensuing delinquent investigations of DI-00-1499 and DI-09-0045:

- 7 Sep 99, AMCOM legal advisor comments and recommendation memoranda concerning IES contract production-related Engineering Change Proposal (ECP), and Technical Direction Letter (TDL) tasks related mischarges.
24 Apr 03, ACO issuance of Corrective Action Request (CAR), no. DCM03-058 - - DAAH01-98-C-0138 labor mischarging as confirmed by DCMA and DCAA LM resident offices, (TAB A)
- 3 Jan 05, DOJ and LM \$1.4 million Settlement agreement for LM 1994-1998 mischarges on IES contracts, (CID Report #0038-99-CID113-20797), (TAB B)
- Around or about Jul 06, LM made a prohibited brazen attempt to recoup the \$1.4 million Settlement amount through its overhead cost, (TAB C)
- 24 Jul 07, collaborating LM credible first-hand witness, Mr. Dick McGough, former LM IES contract manager comes forward in support of LM historical cost-type contract mischarging, which further serves to strengthen the Government cases, (TAB D)
- Around or about Jul 08, LM recruits and hires Mr. Jim Byrne the former deputy of the OSC to work in its corporate legal office in apparent clear violations of federal conflict of interest and ethics laws, (TAB E)
- 30 Sep 05, supplemental submittal of allegations to OSC case file no. DI-00-1499 in the estimated amount of at least \$84 million, including execution of an insidiously fraudulent 4.5 million overpayment modification number P00030 under contract DAAH01-98-C-0138, (TAB F)
- Specific examples of the myriad insidious LM after the fact IES cost and task transfers, for prohibited production related ECP, IFCS, and ILMS, TDL tasks and efforts (TAB G)
- LM 14 year continuous noncompliance with the terms of the contract DAAH01-94-C-A005 through its continuous submissions of more than four feloniously

bogus \$3 million dollar ADU cost settlement proposals to the Government,
(TAB H)

- March of 2003, the callous DA fielding and deployment of defective and unsafe MLRS, M270A1 launcher systems into a combat zone doing Operation Iraqi Freedom, even though the launcher systems were fully known to display both operational and unmitigated catastrophic safety hazards that posed substantial tactical performance flaws and horrific safety risks to unsuspecting launcher crews. The launchers also posed a substantial risk of catastrophic loss to the civilian population and government property while in theater and hostile tactical environments, (i.e., inadvertent rocket launches, electrical shock, and un-commanded launcher turret movement).

The delinquent DA, ROIs do not contain or reference sufficient credible or hard evidence, first-hand witness testimony, legal precedence, or any sound business practice that would be contrary to the complete substantiation of the majority of my allegations included in DI-00-1499.

Moreover, many of the delinquent DA, ROIs negative findings was based upon the false and unfounded premise that completely separate fixed price MLRS system production contracts and their related contract production tasks and issues were fully within the scope of performance under the referenced separate and concurrent MLRS cost-reimbursable IES contracts. This was a false and unfounded assumption repeatedly utilized in the DA, ROIs.

Separate MLRS system production contract related tasks, as well as R&D and EMD separate contract tasks were expressly prohibited in the opening paragraphs to each one of the separate Statements of Work (SOW) incorporated into the referenced IES contracts.

Collaborating first-hand credible witnesses and extensive hard evidence currently exists that produce credible information which is completely contrary to most of the DA, ROIs negative findings of longtime past and present LM, and perfidious past and present government management employee collusive systemic fraud and criminal activity.

Additionally, literally years worth of essential and relevant LM contract cost and past performance data , contract data item reports, accounting ledgers, invoices, pertinent books, and records generated and compiled at considerable government expense, previous concurrent government investigations of LM questionable and alleged multi-million fraudulent business practices, and at least one apparent willing and credible LM collaborating management witness for the Government were either completely ignored by DA investigators and/or auditors or were not considered, reviewed, or interviewed during the more than five year malingering conduct of the DA, ROIs. This fact alone cast serious doubt as to the veracity and rudimental completeness of the purported DA investigations.

In the positive interest of expediting adequate and properly focused follow-on Government required audits and investigations of both OSC case files DI-00-1499, (\$100 million), and DI-09-0045, (\$84 million), I will briefly reiterate some of the case allegations and expose some of the enormous un-researched or ignored historical supporting hard evidence and voluntary first-hand credible contractor witness statements provided to the OSC that were omitted from the flawed and delinquent DA, ROI findings.

Shown below is a brief chronology of some of the significant relevant events and documented hard evidence not considered or ignored in the DA, ROIs and may have been major contributing factors to the reports being severely flawed, dated, and inadequate as submitted. Also shown below is a listing of some of the critical DA, ROI omissions, contract misinterpretations, and false unfounded assumptions.

1. DCMA, Lockheed Martin Dallas, Administrative Contracting Officer's 24 Apr 03 issuance of CAR, no. DCM03-058 -- DAAH01-98-C-0138 Labor Charging, for which DCMA evaluations resulted in the same conclusions as to my written 3 Jun 99, allegations that LM failed to collect and charge costs in accordance with the terms and conditions of contract number DAAH01-98-C-0138.
(TAB A)
2. Lockheed Martin negotiated Settlement Agreement executed on 3 Jan 05 in which Lockheed agreed to pay the United States \$1.4 million dollars to resolve my repeated allegations of rampant covert MLRS system production related Engineering Change Proposal (ECP) and voluntary Value Engineering Change Proposal (VECP) mischarging under government Industrial Engineering Services (IES) cost-type contracts (CID Report #0038-99-CID113-20797), from 1994 to 1999.
(TAB B)
3. Army Staff Judge Advocate's (SJA), and the Department of Justice (DOJ), 27 Apr 05 investigation which concluded Lockheed Martin defrauded the Government of at least \$5 million concerning some of the allegations contained in DI-00-1499.
(TAB B)
4. Collaborating Lockheed Martin witness for the Government, Mr. Dick McGough's 24 Jul 07, electronic mail and attachment sent to Mr. Clarence Daniels, Contract Specialist, AMCOM notifying him of alleged gross contract mismanagement and alleged cost mischarges to include IES TDLs, billed against AMCOM government cost-reimbursable contracts for the years 2001 through 2005.
(TAB D)
5. 30 Sep 05, supplemental submittal of allegations to OSC case file no. DI-00-1499 in the estimated amount of at least \$84 million more in additional alleged collusive Lockheed Martin government employee criminal activity, gross contract mismanagement, and contract mischarges.
(TAB F)

6. Round or about July of 2006 Lockheed attempts to recoup the negotiated settlement amount through its overhead costs, (see para., 2 above). The negotiated agreement expressly forbids settlement cost recoupment in whole or in part under LM overhead cost submissions. This both intentional and brazen act constituted a Lockheed violation of its negotiated \$1.4 million Settlement Agreement with the Government and FAR clause, "52.242-3, Penalties for Unallowable Costs". This intentional unlawful act would also serve to violate any reasonable terms of any deferred or non-prosecution agreement that may have been made between the Department of Justice (DOJ), and Lockheed as a direct result of the previous 27 Apr 05 SJA investigation which found that Lockheed Martin defrauded the Government in the amount of \$5 million with no apparent SJA or DOJ prosecutions or investigations of likely complicit government perpetrators whatsoever.
(TAB C)
7. Lockheed Martin fourteen year continuous noncompliance with the terms of the legal contract Re-opener clause "H-14", include in MLRS system production contract number DAAH01-94-C-A005 and its prior submissions of more than four feloniously bogus ADU settlement cost proposals to the Government for final settlement negotiations over the past 10 years.
(TAB H)
8. Lockheed Martin false claim and certification under DAAH01-89-C-0336, modification number P00241, clause "H-52" that LM alleged voluntary VECP number MI-C-1450A1 was developed "exclusively" at private expense. It was government funded IES, ECP contract effort that ultimately cumulated in the final delivery of MI-C-1450A1 under the ECP, DI-CMAN-80639 data item requirements of cost-reimbursable IES contract number DAAH01-92-C-0243 on 24 Nov 1993, not exclusively under contract DAAH01-89-C-0336 as LM falsely claimed and certified. Alleged LM voluntary VECPs numbers MI-C-1352R1 and MI-C-1397 also show delivery under the same IES contract DAAH01-92-C-0243 data item. An undisputable trail of hard evidence tracing the continuous prohibited IES cost-reimbursed funding of the research, development, testing, and distribution of LM alleged voluntary VECPs is extremely clear as shown on the LM generated consolidated listing of all IES RFD/RFW/ECP efforts as required by and included in all the questioned IES contract CDRLs starting from 15 Nov 92 through 23 Sep 98. The DA, ROI response to this particular allegation stands to bear witness to the unfocused shallowness of the DA, ROI investigations and the fact less unsupported basis of its negative determinations. In addition, records show that several of the so-called LM voluntary VECPs were approved by former Col. William Taylor on behalf of the Government. US Army retired Col. Taylor was subsequently employed by LM and eventually became the LM IES contracts manager for a time.
(TAB I)

9. Lockheed Martin's possible ethical and conflict of interest violations surrounding the most recent purported recruitment and hiring of Mr. Jim Byrne, the former Deputy to the US Special Counsel for work in its corporate legal office in July of 2008.
(TAB E)
10. Partial listing of critical DA, ROI omissions, contract misinterpretations, and false unfounded assumptions:
- a) The DA, ROIs finding that separate and concurrent MLRS system production related contract tasks and issues were within scope of the referenced separate and concurrent MLRS cost-reimbursable IES contracts is false and is not in accordance with the plain language of the questioned IES contracts SOWs. The questioned IES contracts were expressly worded to exclusively support the fielded MLRS, M270 launchers.
 - b) The DA, ROIs finding that separate and concurrent MLRS system R&D and EMD contract tasks and issues were within the scope of the referenced separate and concurrent MLRS cost-reimbursable IES contracts is false and is not in accordance with the plain language of the questioned IES contracts SOWs. The questioned IES contracts were expressly worded to exclusively support the fielded MLRS, M270 launchers.
 - c) The DA, ROIs finding that cost-type IES contracts were issued as companion contracts to concurrent fixed price MLRS production contracts is false and the issue clearly was not properly or thoroughly researched by the investigations. The questioned IES contracts were expressly issued to only support fielded MLRS, M270 launchers.
 - d) The DA, ROIs finding that contractor voluntary VECP 1450 was exclusively developed and delivered under fixed price contract DAAH01-89-C-0336 is false. Both the IES production related ECP and voluntary IES VECP contract cost mischarging issues clearly were not properly or thoroughly researched or audited by the investigations (see TAB H).
 - e) The DA, ROIs finding that the 5@ shipped short M270A1 Fire Control Systems (FCS), under M270A1 production contract DAAH01-00-C-0109 were subsequently received by the Government is false. To date the Government has no credible or auditable records of any subsequent required no-cost acceptance and LM delivery of the 5@ shipped short FCSs under contract DAAH01-00-C-0109 totaling \$7.5 million. The DA, ROIs supporting documents contain no such documentation of any subsequent FCS no-cost deliveries under contract DAAH01-00-C-0109.
 - f) The DA, ROIs finding that specific residual warranty spares purchased under contract DAAH01-94-C-A005, modification PZ0008, did not become property of the Government at the end of the warranty contract period is false. Paragraph A-11

of PZ0008 specifically states the same. Paragraph E-19 of PZ0008 specifically mandated PCO notification before and after contractor initiation of warranty performance and contractor use of the specified rotatable warranty spares purchased at Government expense.

Despite a more than five year malingering DA and DOD, IG investigation of the instant allegations, additional investigations for at least \$84 million more in collusive LM and government employee past and present systemic criminal activities, false claims, and insidious duplicate contract mischarges remain in limbo.

I am bemused by the thought of any credible or reasonable DA or SJA civil or criminal investigations having been conducted or any contract settlements having been made, without my active assistance or that of Mr. McGough's. Considering the cost magnitude and complexity of the allegations in DI-00-1499 and its September 2005 supplement no equitable contractual settlements could have reasonably been made by the SJA or DOJ without reasonable knowledge of LM unadulterated IES contract actual incurred and billed costs obtained through Government forensic post-award cost accounting, technical, and government property audits of the questioned contract billings.

My original questions concerning the investigations of DI-00-1499 and its 30 Sep 05 Supplement remain completely unanswered while perfidious DA, AMCOM, and PEO perfidious past and present management officials remain completely unaccountable for their intentional procurement fraud, theft by deception, recreant acts of omission, and criminal dereliction of their official, ethical, and fiduciary duties in apparent exchange for promotion, private gain, or post government employment through Lockheed Martin.

The DA, ROIs did not address the following essential questions paramount to its investigations:

- Was the actual past and present IES contracts Statements of Work (SOW) language ever juxtaposed with that of the DA, ROIs contradictory legal finding that production related, duplicate Technical Direction Letter (TDL), Research and Development (R&D), Engineering Manufacturing and Development (EMD), and contractor voluntary Engineering Change Proposal (ECP) and voluntary Value Engineering Change Proposal (VECP) ECP and VECP tasks were within the questioned IES contracts SOWs by DA or AMCOM legal offices? If so, where is that written legal determination and by who and when was it made? The IES SOWs express prohibition against such tasks formed the legal and criminal basis for both the referenced DOJ \$1.5 million 5 Jan 05, settlement agreement and its 27 Apr 05, \$5 million LM fraud determination.

- What was the total amount of money and government property defrauded the Government under the DA, ROIs investigated contracts and issues?
- To what extent did perfidious past and present government employees participate or perpetrate the LM frauds and did the government employees directly or indirectly benefit?
- Is the LM fraud continuing? If not, why not? What current corrective action or preventive measures has the Government and/or LM implemented to prevent future LM IES cost reimbursable contract, government property abuses and theft, and fraud between its cost-type and fixed price production, R&D and EMD separate on-going and concurrent contracts with the Government?
- Do deferred or non-prosecution agreements exist between LM and the DOJ? If not, were they ever considered during the DA, ROIs and by whom?

I believe a full and properly focused investigation of the suspected government perpetrators that were complicit in the LM confirmed fraud is in order along with the proper conduct of the necessary forensic post-award cost accounting, technical, and government property audits. Accordingly any new proposed investigations of DI-00-1499 and its 30 Sep 05, Supplement (DI-09-0045), of any sort should be immediately and independently conducted by the Office of the Secretary of Defense, (OSD) or level higher.

To allow past and present perfidious US Army Aviation and Missile Command and Program Executive Office management officials to literally continue to investigate themselves concerning my allegations at this point would be unethical and would constitute a conflict of interest. No new investigations initiated at this point should be conducted or supervised by DOD IG, DA, AMCOM, or PEO management officials under any circumstance. Any new investigation may very well be conducted or supervised by the same perfidious DOD IG, DA, AMCOM, or PEO management officials that have taken part, benefited, or acquiesced to the actual LM fraud itself including participation in illegal whistleblower reprisals, and subsequent Agency cover-up of prohibited personnel practices through their heretofore lack of credible evidence collection and proper investigations of the same (i.e. OSC case files, MA-03-1155 and MA-09-0726).

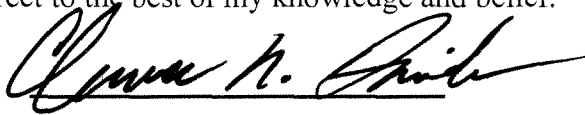
In view of the enormous magnitude of the Government's potential monetary and government property recoveries which in all likelihood may far exceed \$184 million, new complete and proper investigations utilizing the plain language of the questioned contracts and reasonable forensic contract technical, cost, and government property audits must be made concerning the allegations contained in both OSC case files DI-00-1499 and DI-09-0045 and must be timely, thoroughly, and responsibly performed by the Government.

Based on my review of the 5 year delinquent DA, ROIs, and considering the amount of available credible hard evidence and previous investigations and audits confirming LM contract frauds which are overwhelmingly contrary to Agency findings, I have determined that based on the lack of required evidence collection including forensic contract data mining, post-award cost, technical, or government property audits, the DA, ROIs do not contain all of the information required by statute and that the DA, ROIs findings are legally flawed and unreasonably superficial.

Declaration

I, CLARENCE N. DANIELS, do hereby declare:

I declare under penalty of perjury under the laws of the United States of America that the foregoing comments and the attached supporting documentation are true and correct to the best of my knowledge and belief.



March 11, 2009

SIGNATURE

DATE

CF, with w/o Attachments,

Mr. Dick McGough, first-hand witness for the Government
Hon. Eric Holder, US Attorney General
Hon. Robert Gates, Secretary of Defense
Hon. Pete Geren, Secretary of the Army
Hon. Gordon S. Heddell, Acting DOD, Inspector General
Director, Federal Bureau of Investigation
Hon. Alice Martin, US Attorney for the Northern District of Alabama
Hon. Jeffrey A. Taylor, US Attorney for the District of Columbia
General Accountability Office, Fraud-Net
DOJ, Office of Professional Responsibility
DOJ, National Procurement Fraud Task Force
DCAA, Inspector General
DCMA, Inspector General
GSA, Inspector General
President's Council on Integrity and Efficiency, (Redacted)
US Equal Employment Opportunity Commission, Inspector General (redacted)
Hon. Parker Griffith, U.S. Representative, Fifth Congressional District (redacted)
Hon. Artur Davis, U.S. Representative, Seventh Congressional District (redacted)
Hon. Jeff Sessions, U.S. Senator, Alabama (redacted)
Hon. Richard Shelby, U.S. Senator, Alabama (redacted)
Hon. Kay Hagan, U.S. Senator, North Carolina (redacted)

A

7 September 1999

SUBJECT: Legal Comments on Tasks Assigned at the August 17th and 18th Meeting

1. IES Contract Issues:

a. Possible revisions to existing SOW.

- (1) Revision of the existing limitation to “fielded” issues (para. 1.1) is not recommended. That limitation was contained in the J&A authorizing the current contract. (Also, the distinction between what goes into the production contracts and what is covered by IES is a matter of regulatory and policy guidance)¹. Based upon the following analysis, it is believed that the issues raised in the meeting can be addressed without attempting to deviate from this existing guidance.

- (2) Adding an ESM/SubESM/TDL to fund some level of development and presentation of issues impacting future contracts is possible. A bona fide need (BFN) in the current years² must exist. That BFN would be difficult to find for US only requirements given current rules for BFN, purpose statute and full funding. However, the MOU Procurement Supplement contains a basis for such a BFN among the Partner nations.³ Such costs of maintaining a “producible TDP” could be assessed to third party buyers under paragraph 7.6.4. LMMFC see this as a critical function to assure that the system can be produced (time and costs) when a future buy exists. The Government(s) must judge the risk versus other funding priorities. The implementation could allow for a low dollar effort to first articulate the problem and then require a further TDL before effort could be spent on a resolution. To avoid many issues previously discussed⁴ there would be a bright-line test as to whether the effort could be worked under IES. That test would be that the issue must not directly impact any current contract outside IES. If due to later awards, options or a change order, the issue does directly impact another contract after being

¹ See AR 700-90, paragraph 6-8.c. Also need to address with the policy office the status of prior MICOM Policy No 70-1 and related correspondence from higher headquarters.

² It is legally possible to cover needs in all years of a funds availability (i.e., FY 99, 00 and 01 bona fide needs) with FY 99 PA funds. However, this approach is only theoretically discussed by GAO. I’m not sure anyone has done it before.

³ See primarily Article VIII. See also paragraphs 1.3, 6.2, 7.6.1 and 7.6.3.

⁴ There are some legal concerns about whether you can have an end item properly priced with a FFP completion CLIN and a CP term CLIN combined. Also, the failure to have a clean and consistent test as to when the cost belongs in one contract or the other leads to mischarging problems. Exceptions could be explored, but only at the PCO level.

TAB A

initiated under IES, it will cease to be an IES effort and be worked under the appropriate contract.⁵

- (3) It needs to be understood (in theory at least) that the TDP maintained under the IES SOW (See Part III, paragraph 2.4, and Part IV.) is the generic TDP (possibly the “producible TDP” noted above) and not the production TDP. If a TDP is required by the Government under a production contract (e.g., to accept certain items bought to the TDP), then that production TDP will not necessarily be identical to the generic TDP⁶. To the extent that a TDP is not required for the production contract (e.g., all areas controlled by performance spec) or otherwise bought under a data item, all effort and cost to maintain a TDP for these areas for production purposes are contractor expense/discretion.
- b. SIE should be analyzed strictly as a GFP issue. If GFP is, or becomes, not suitable for the purpose provided, the contract says who is responsible. If it is a Government responsibility to render the SIE suitable, the Government could do so via equitable adjustment to the production contract under which the GFP is provided or the Government could replace or correct the GFP outside the production contract. (Note the IES contract is a possible vehicle depending upon the facts.) When the contractor makes a change (under performance specs) or seeks the Government’s approval of a contractor needed/desired change (via contract mod), any impact of a contractor change on the SIE is the contractor’s responsibility. Unlike the TDP issue discussed above, there is no known authority (or MOU requirement) to spend current PA dollars to maintain the ability to produce should a new requirement arise in the future.⁷ The same analysis would be applied to any type of GFP.
- c. The IES contract contains recurring tasks (needed to justify initial level of funding) and the authority to buy more effort (options) with specific tasking or to redirect the existing level of effort from the recurring tasks to specific tasks of a higher priority (TDLs). Within the recurring tasks the PMO and contractor bear the burden of assuring they remain within scope or seek PCO clarification. The contract specifically states that the PMO may not authorize work that is outside the scope of the contract. It would be difficult/impossible for the PCO to be aware of all that occurs via technical liaison for the recurring tasks. However, redirection via TDLs is more limited (20-30 per year?) and may represent unique tasking not within the prior experience of the PMO and contractor. PCO signature upon the TDL would grant an additional measure of protection to LMMFC should it be determined that the TDL was outside the scope of the contract.⁸ Unless the

⁵ See related discussion at paragraph 3.c.

⁶ Not all issues to be resolved affect current production items either due to timing or subject matter.

⁷ For general discussion of these types of issues and funding for production/plant equipment for future production see AR 700-90 and DODD 4275.5.

⁸ A writing by the PCO can constitute a change order (or an action capable of ratification) under the changes clause even though it is a procedural deviation from FAR 43.301.

ABA

individual had change order authority which is not likely, such protection would not exist if such TDLs were signed by a COR.

2. All NON-IES Contract Issues:

- a. Statutory funding restrictions require that all effort be allocated to the proper contract(s) based upon direct benefits received so that the correct funds in the correct amounts are used for that effort. This requirement is unaffected by concerns such as economy, efficiency, practicality of even impossibility⁹. The discussion and application of these principles are too complicated to summarize here but were extensively discussed during the meeting.
- b. FFP contracts place all risk on the contractor but for that specifically reserved to the Government. Cost contracts are the opposite. The wording in prior contracts concerning "P code" ECPs does not alter anything stated so far. When read without any background but the contract itself, such words appear to make the contractor responsible for all such P code ECPs regardless of the party normally responsible under the specific fact situation. These added words do not in any way state, or even imply, that any portion of the FFP production effort is to be performed under the IES contract. (As noted previously, the IES prohibits such work.) Alleged understandings/practices to this effect (i.e., that the Government would fund all ECPs of a certain type under IES) are not supported by any portion of any contract which has been reviewed to date. (Full listing of contracts and specific clauses are to be provided by Acquisition for review.)
- c. FFP production contracts in the future are to be changed to the extent that we will start with zero language added on the subject of ECPs or change orders. Such prior added language appears to have confused one or more parties and certainly no longer represents the agreement or understanding of the parties. The normal risks and responsibilities of a FFP contract shall apply until such time as both parties identify a duty/responsibility or risk which they intend to alter. Contract language will then be written to address only that specific issue. No terms or definitions will be added until it is found that clarification of the rights and duties of the parties require additional terms and definitions. Clarifications and definitions for non-contractual activity (i.e., technical liaison and partnering) will not be written into the contract. (Liaison and partnering require a degree of flexibility that is lost once you create binding contract language.)
- d. All discussions of ways to reduce contractor risk under FFP via greater configuration control being given to the contractor must consider the impact of the MOU Procurement Supplement Article VIII.

3. Miscellaneous Issues:

⁹ An impossible situation (funds are not available based upon correct analysis) does not mean that the legal analysis is wrong, it may indicate an Antideficiency Act Violation.

AB A

- a. Any non-contractual statement of understanding or clarification (within LMMFC, within the Government or between the parties) should include the following topics.
- (1) Do not assume that every possible MLRS work task belongs in an existing contract. Some efforts will require a new contract vehicle. In practice most will fit an existing contract if they do not equate to a new program or end item buy.
 - (2) The PMO should not issue IES tasks/direction to the contractor until it is clear that the IES is the correct contract vehicle.
 - (3) The contractor assumes reimbursement for effort at his own risk until he verifies that the effort it is being performed under the proper contract and such effort is reimbursable under that contract.
 - (4) Areas of potential disagreement or confusion as to which contract is correct (or CLIN/SLIN within a contract), should be discussed by the PCO/ACO/LMMFC. Advanced agreements are allowed by FAR 31.109.
- b. Common sense and practicality cannot be substituted for statutory funding rules or the plain meaning of the contractual agreement. All such attempts lead to problems.
- c. There is significant confusion on funding principles when mixing current benefits (effort applies to current production) and future benefits (e.g., the MOU partner's requirement for a producible TDP). The simplest logic is to think in terms of two levels of benefit. Current contract requirements for an effort are direct and not optional. The future benefits, being discussed, are: optional (even if the option of doing nothing is impractical); uncertain (the effort itself once expended may be OBE before benefiting anyone); and unnecessary if resolved by a party having a more direct benefit/requirement. The two levels are so different, that direct, current benefiting parties pay their fair share when such parties exist and we look no further. If current, direct benefiting parties do not exist and if another party(ies) can document a BFN and has funds, we apply the funding analysis at the next level. In the alternative, we could simply define the second level as not being "direct" when the first level exists.¹⁰
- d. One exception to the problems with working future issues in the current production contract is the Value Engineering Clause. This statutory authorized program allows for that possibility if there is an overall reduction in cost to the agency. Funding of the VECF (e.g., negative instant savings or implementation costs) must still follow the normal rules regardless of the implementation

¹⁰ The author is unaware of any documented and authoritative analysis on this point. The conclusions above are an extension of what is available.

TAB A

vehicle/contract. (See previously released 15 June 1999 paper: Value Engineering and Performance Specification Contracting.)

Dayn T. Beam
Attorney Advisor
AMCOM

TAB A

Daniels, Clarence N CIV USA AMC

From: Beam, Dayn T LEGAL
Sent: Wednesday, July 19, 2000 1:34 PM
To: James, Kathy M ACQ; Salinas, David R; Daniels, Clarence N ACQ; Pratte, Allen; Burke, Wayne; Summers, Rod
Cc: Allen, Fred W LEGAL
Subject: Suspension of TDL 00-002
Attachments: tdl 00-002.doc; meetingtask.doc

- >
- >1. All performance and incurrance of costs against TDL 00-002 (issued against the IES contract) must be suspended immediately. Provide the undersigned NLT 1200 hours on 20 July 2000, a copy of the written direction to the contractor accomplishing this immediate suspension.
- >
- >2. The undersigned has been advising (verbally and in writing) for over two years on the limitations applicable to funding" obsolescence" type requirements. The attached 7 Sep 99 document summarizes those limitations. This document was provided to the MLRS PMO and Acquisition personnel. These issues were discussed extensively with contractor and government personnel with regard to the mischarging between the production and IES contracts currently under investigation.
- >
- >3. TDL 00-002 was reviewed by the undersigned on 17 May 00 (see attachment below) and was determined to be not legally sufficient. (It appears that the TDL was issued and accepted on 15 May 00 prior to receipt of the specific legal objections.) This legal opinion was issued to the Acquisition Center. (Because of similar problems with prior TDLs under the IES contracts, the Acquisition Center has undertaken to review all TDLs prior to issuance .) Once an action is found to be legally insufficient, that action may not be taken without resolution of that legal objection by the Legal Office or the Commanding General. (See MICOMR 27-6, 18 Nov 94, paragraph 4.c, which is listed as the current version.) Based upon prior written and verbal legal advice this TDL never should have been written or issued without advance legal coordination.
- >
- >4. The undersigned should be briefed ASAP on the costs actually incurred prior to suspension, the bona fide need(s) satisfied by these costs, the fund(s) cites that were allocated to this TDL (via CLIN 0019) and amounts (if more than one cite), and the party (ies) directly benefiting from the DTL effort performed. After receiving this information, the undersigned will advise as to the corrective action(s) and/or reporting required.
- >
- >
- >Dayn T. Beam
- >

TAB A

Daniels, Clarence N CIV USA AMC

From: Beam, Dayn T LEGAL
Sent: Thursday, July 20, 2000 10:00 AM
To: Beam, Dayn T LEGAL; James, Kathy M ACQ; Salinas, David R; Daniels, Clarence N ACQ; Pratte, Allen; Burke, Wayne; Summers, Rod
Cc: Allen, Fred W LEGAL
Subject: RE: Suspension of TDL 00-002

Reminder, I need to see documentation that this TDL has been stopped. I'm on leave Friday. Unless the ongoing probable violations of law and regulations are stopped, I will have to use the remainder of today to immediately prepare a report to turn this matter over to the proper management and investigative channels.

Keep in mind that the legal sufficiency of a given action has no direct relationship to how intelligent, practical or beneficial a given action might be. Legally sufficiency is based upon the limited authority conveyed to agents of the Government and the authorized procedures.

Dayn Beam

> -----Original Message-----

>From: Beam, Dayn T LEGAL

>Sent: Wednesday, July 19, 2000 1:34 PM

>To: James, Kathy M ACQ; Salinas, David R; Daniels, Clarence N ACQ; Pratte, Allen; Burke, Wayne; Summers, Rod

>Cc: Allen, Fred W LEGAL

>Subject: Suspension of TDL 00-002

>

>

>1. All performance and incurrence of costs against TDL 00-002 (issued against the IES contract) must be suspended immediately. Provide the undersigned NLT 1200 hours on 20 July 2000, a copy of the written direction to the contractor accomplishing this immediate suspension.

>

>2. The undersigned has been advising (verbally and in writing) for over two years on the limitations applicable to funding "obsolescence" type requirements. The attached 7 Sep 99 document summarizes those limitations. This document was provided to the MLRS PMO and Acquisition personnel. These issues were discussed extensively with contractor and government personnel with regard to the mischarging between the production and IES contracts currently under investigation.

>

>3. TDL 00-002 was reviewed by the undersigned on 17 May 00 (see attachment below) and was determined to be not legally sufficient. (It appears that the TDL was issued and accepted on 15 May 00 prior to receipt of the specific legal objections.) This legal opinion was issued to the Acquisition Center. (Because of similar problems with prior TDLs under the IES contracts, the Acquisition Center has undertaken to review all TDLs prior to issuance.) Once an action is found to be legally insufficient, that action may not be taken without resolution of that legal objection by the Legal Office or the Commanding General. (See MICOMR 27-6, 18 Nov 94, paragraph 4.c, which is listed as the current version.) Based upon prior written and verbal legal advice this TDL never should have been written or issued without advance legal coordination.

>

>4. The undersigned should be briefed ASAP on the costs actually incurred prior to suspension, the bona fide need(s) satisfied by these costs, the fund(s) cited that were allocated to this TDL (via CLIN 0019) and amounts (if more than one cite), and the party

TAB A

(ies) directly benefiting from the DTL effort performed. After receiving this information, the undersigned will advise as to the corrective action(s) and/or reporting required.

>

>

>Dayn T. Beam

>

> << File: tdl 00-002.doc >>

> << File: meetingtask.doc >>

>

Daniels, Clarence N CIV USA AMC

From: James, Kathy M ACQ
Sent: Wednesday, July 19, 2000 2:24 PM
To: Beam, Dayn T LEGAL; Salinas, David R; Daniels, Clarence N ACQ; Pratte, Allen; Burke, Wayne; Summers, Rod
Cc: Allen, Fred W LEGAL
Subject: RE: Suspension of TDL 00-002

Dayne, based on our conversation this morning, I immediately alerted Kathy Verrijke of the problem with this TDL. She and I are working with Steve Bramlette in the MLRS PMO and Jerry Smith of LMMF-C to develop a Statement of Work to incorporate in the IES contract. The SOW will address "future" obsolescence and will be coordinated with your office for legal input by early morning, Thursday, 20 Jul 00. The actuals for this effort are reflecting an 85% completion as of 30 Jun 00. I believe that all available hours for subject TDL have been expended through 19 Jul 00. We will meet with you to ascertain corrective action, if any, as soon as information is received from LMMFC.

Kathy James, Chief, MLRS Division

> -----Original Message-----

>From: Beam, Dayn T LEGAL
>Sent: Wednesday, July 19, 2000 1:34 PM
>To: James, Kathy M ACQ; Salinas, David R; Daniels, Clarence N ACQ; Pratte, Allen; Burke, Wayne; Summers, Rod
>Cc: Allen, Fred W LEGAL
>Subject: Suspension of TDL 00-002

>

>

>1. All performance and incurrence of costs against TDL 00-002 (issued against the IES contract) must be suspended immediately. Provide the undersigned NLT 1200 hours on 20 July 2000, a copy of the written direction to the contractor accomplishing this immediate suspension.

>

>2. The undersigned has been advising (verbally and in writing) for over two years on the limitations applicable to funding "obsolescence" type requirements. The attached 7 Sep 99 document summarizes those limitations. This document was provided to the MLRS PMO and Acquisition personnel. These issues were discussed extensively with contractor and government personnel with regard to the mischarging between the production and IES contracts currently under investigation.

>

>3. TDL 00-002 was reviewed by the undersigned on 17 May 00 (see attachment below) and was determined to be not legally sufficient. (It appears that the TDL was issued and accepted on 15 May 00 prior to receipt of the specific legal objections.) This legal opinion was issued to the Acquisition Center. (Because of similar problems with prior TDLs under the IES contracts, the Acquisition Center has undertaken to review all TDLs prior to issuance.) Once an action is found to be legally insufficient, that action may not be taken without resolution of that legal objection by the Legal Office or the Commanding General. (See MICOMR 27-6, 18 Nov 94, paragraph 4.c, which is listed as the current version.) Based upon prior written and verbal legal advice this TDL never should have been written or issued without advance legal coordination.

>

>4. The undersigned should be briefed ASAP on the costs actually incurred prior to suspension, the bona fide need(s) satisfied by these costs, the fund(s) cited that were allocated to this TDL (via CLIN 0019) and amounts (if more than one cite), and the party

T-B A

(ies) directly benefiting from the DTL effort performed. After receiving this information, the undersigned will advise as to the corrective action(s) and/or reporting required.

>

>

>Dayn T. Beam

>

> << File: tdl 00-002.doc >>

> << File: meetingtask.doc >>

>

TAB A



DEFENSE CONTRACT MANAGEMENT AGENCY
DEFENSE CONTRACT MANAGEMENT AGENCY LOCKHEED MARTIN DALLAS
P.O. BOX 650003 M/S PT-03
DALLAS, TEXAS 75265-0003

IN REPLY DCMA-GBVA (972-603-2555)
REFER TO

April 24, 2003

MEMORANDUM FOR United States Army Aviation and Missile Command (Attn: Jim Snyder), 5200 Martin Road, Redstone Arsenal, AL.

SUBJECT: Contract DAAH01-98-C-0138, Fact-Finding Questions and Responses

This memorandum provides responses to your specific fact-finding questions on CLINs 1010, 1020 and 1060 under subject contract. (Reference your Memorandum dated 27 February 2003).

Enclosed are the following reports:

- a. DCAA Memorandum with attachments including actuals and cost transfers.
- b. DCMA Technical Evaluation of the Fact-Finding Questions provided by your letter.
- c. DCMA Technical Evaluation of Special Tooling.

The contractor did not provide copies of the purchase orders for Special Tooling until after the evaluation was completed today. Our Engineers utilized lists of the purchase orders to perform their evaluation. They experienced some problems due to the Attachment 10 in the contract not having part numbers. If they find additional problems while reviewing the purchase orders we will notify you.

The DCMA evaluations have resulted in the same conclusions as the PCO: that the contractor has failed to collect and charge costs in accordance with the contract terms and conditions. Accordingly, based on our findings our office is implementing the following measures to prevent future problems as well as identify existing ones not only on the MLRS program but reveal if we have problems on other programs:

a. Effectively immediately we have requested and received DCAA concurrence that technical personnel from DCMA will be included in all time card audits. In the past DCAA has interviewed contractor personnel and determined that the employee exists, what they are working on, where did the work authorization come from, is the employee charging early or late and does the employee prepare his own time sheet. DCMA will now participate in the audits providing technical support to identify if that person should be charging to the contract and G.O.# identified. In addition, if you would like to provide a representative from the Acquisition Center and the Project Office in this first time card audit next Tuesday you will be welcome to participate.

b. DCMA will be issuing a Corrective Action Request (CAR) (level yet to be determined). The CAR is a DCMA system used when there is a contractual non-conformance. The CAR will require the contractor to address the deficiencies found, identify the root cause, and provide corrective action.

/s/

DEBORAH L. WILLIAMS
Administrative Contracting Officer
DCMA Lockheed Martin Dallas

cc:
Colleen Rodriguez, AMSAM-AC-TM-C, Redstone Arsenal, AL
Clarence Daniels, AMSAM-AC-TM-C, Redstone Arsenal, AL
Mr. Allen Pratte, SFAE-MSL-PF-BM-AP, Redstone Arsenal, AL

TAB A



DEPARTMENT OF THE ARMY
 UNITED STATES ARMY AVIATION AND MISSILE COMMAND
 REDSTONE ARSENAL, ALABAMA 35898-5000

Attachment "01"
 2 of 2

REPLY TO
 ATTENTION OF

June 1, 1999

MLRS Contracting Office

Mr. Bill Kennedy
 Lockheed Martin Vought Systems, Incorporated (LMVS)
 Post Office Box 650003, MS MC-09
 Dallas, Texas 75265-0003

Dear Mr. Kennedy:

Reference contract DAAH01-98-C-0138, cost billings against Program Support, CLIN 1020 Scope of Work (SOW) and Special Tooling CLIN 1010.

Review of the monthly cost status reports submitted under the referenced contract by this Command indicate that the additional Work Breakdown Structure (WBS) tasks shown below are being charged and billed against the Program Support CLIN 1020 of the contract:

<u>WBS</u>	<u>Description</u>
EB	Launcher PRAT
FBE	P-Code ECPs/Dev/Waivers
FBL	TDP Maintenance
DDD	Jumper Plugs

The WBS(s) listed above are not included in the SOW for Program Support, CLIN 1020 of the contract and are not subject to cost reimbursement under the terms and conditions of contract DAAH01-98-C-0138. All of the above tasks if they are required for acceptable contract performance are included as part of the negotiated firm fixed price portion of the contract.

All LMVS charges and billings if any, to the Government against the aforementioned WBS(s) shall cease immediately. Any payments made to LMVS by the Government for these tasks and any other Program Support tasks that are not specified in the SOW of the contract must be refunded to the Government in full.

Any comments or questions concerning the content of this letter should be addressed to Mr. Clarence Daniels, (205) 876-8980.

Sincerely,

Clarence N. Daniels
 Contracting Officer

CF: SFAE-MSL-ML-MG-A
 DCMC, LMVS
 AMSAM-L
 DCAA, Resident Auditor

TAB A



ATTACHMENT #014

DEPARTMENT OF THE ARMY
UNITED STATES ARMY MISSILE COMMAND
REDSTONE ARSENAL, ALABAMA 35898-5280

1 of 2

June 3, 1999

REPLY TO
ATTENTION OF
MLRS Contracting Division

Mrs. K. Verrijcke
Lockheed Martin Vought Systems Corporation
Post Office Box 650003, M/S MC-09
Dallas, Texas 75265-0003

Dear Mrs. Verrijcke:

Reference letter dated June 1, 1999 signed by Clarence N. Daniels in regards to Contract DAAH01-98-C-0138, subject cost billings against Program Support, CLIN 1020 and Special Tooling CLIN 1010.

This is to inform you that the above referenced letter is hereby rescinded in its entirety.

Sincerely,

KATHLEEN M. JAMES
Chief, MLRS Contracting Division

CF:
SFAE-MSL-ML-MG-A
DCMC, LMVS
AMSAM-L
DCAA, Resident Auditor

TAB A

Enclosure (4)
to 3-19210/99L-5252
Page 1 of 1

23 Oct 02

***REVISED LIST OF CURRENT LOCKHEED MARTIN VOUGHT SYSTEMS (LMMFC) ACTIONS TO BE INVESTIGATED FOR POSSIBLE FRAUD, PROCUREMENT IRREGULARITIES, MISCHARGINGS, OR DEFECTIVE PRICING.**

1. REQUEST FOR DEVIATION/WAIVER NO.V343, (LAUNCHER PIVOT BOLTS), AND THE RELATED CHANGE REQUEST AND ECPs MI-C1880 AND MI-C1861.

2. MISCHARGEING OF LMMFC INITIATED FIXED PRICE PRODUCTION ENGINEERING CHANGE PROPOSAL (ECP), COSTS TO GOVERNMENT COST-TYPE ENGINEERING SERVICES CONTRACTS FROM 1994-1998. THE ESTIMATED FRAUDULENT COSTS ARE: \$22-\$25 MILLION.

3. MISCHARGING OF VALUE ENGINEERING CHANGE PROPOSAL (VECP) CONCEPT COSTS TO GOVERNMENT COST-TYPE ENGINEERING SERVICES CONTRACT (I.E., REDUCED RANGE PRACTIVE ROCKET VECP MI-C1450). ESTIMATED FRAUDULENT COSTS ARE: \$15+ MILLION.

4. NON-DISCLOSURE OF COST OR PRICING DATA CONCERNING THE AZIMUTH DRIVE UNIT SUBCONTRACT RE-OPENER CLAUSE OF CONTRACT NUMBER DAAH01-94-C-A005. ESTIMATED FRAUDULENT COSTS ARE: \$3+ MILLION.

5. THE COMPROMISING AND THE SUBVERSION OF ALPHA CONTRACTING JOINT IPT AGREEMENTS BY THE MLRS PROJECT MANAGERS' OFFICE (PMO) AND LMMFC TO THE SOLE BENEFIT OF LMMFC UNDER CONTRACT DAAH01-98-C-0138 COST CLINS (I.E.*PROGRAM SUPPORT SOW). ESTIMATED FRAUDULENT COSTS ARE: \$17+ MILLION.

6. THE SOLICITATION AND ACCEPTANCE OF SOLE SOURCE TECHNICAL DIRECTION LETTERS (TDL) FROM THE MLRS PMO FOR WORK AUTHORIZATIONS NOT WITHIN THE SCOPE OF THE GOVERNMENT ENGINEERING SERVICES CONTRACTS TO AVOID STATUTORY REQUIREMENTS FOR COMPETITION.

7. THE UNAUTHORIZED MIGRATION OF FINAL CLOSEOUT TASKS MANDATED BY MODIFICATION P00113 TO BE COMPLETED UNDER CONTRACT DAAH01-92-C-0432 TO THE GOVERNMENT ENGINEERING SERVICES CONTRACT NUMBER DAAH01-98-C-0157 BY LMMFC.

TAB A

B



U.S. Department of Justice

Alice H. Martin
United States Attorney
Northern District of Alabama

1801 Fourth Avenue North
Birmingham, Alabama 35203

Telephone (205) 244-2001
Fax (205) 244-2171

FOR IMMEDIATE RELEASE

JANUARY 4, 2005

www.usdoj.gov/usao/aln

BIRMINGHAM, AL - United States Attorney Alice H. Martin of the Northern District of Alabama announces that Lockheed Martin Missiles and Fire Control, a business unit of Lockheed Martin Corporation ("Lockheed") has agreed to pay the United States \$1.4 million dollars (\$1,400,000.00) to resolve allegations of mischarging the United States Army Aviation and Missile Command.

In 1999, Lockheed Martin voluntarily disclosed inadvertent mischarging between its production and support contracts for the Multiple Launch Rocket System. These contracts are administered by the Army in Huntsville, Alabama. A subsequent audit performed by the Defense Contract Audit Agency challenged the scope of the reported mischarging. Following a cooperative investigation, the parties participated in voluntary mediation and reached a compromise settlement of the disputed amount.

"The United States is pleased that Lockheed cooperated with the investigation and has agreed to refund the over-payments without the need for formal litigation," said Alice H. Martin, United States Attorney. "The settlement demonstrates this office's determination to ensure that companies choosing to do business with the United States remain accountable to taxpayers."

Along with the United States Attorney's Office for the Northern District of Alabama, the Department of Defense's Criminal Investigative Service, the United States Army's Criminal Investigation Division, the Defense Contract Audit Agency, and the Department of Defense's Procurement Fraud Branch participated in the investigation and settlement.

Lloyd C. Peebles, Assistant United States Attorney, was the lead attorney in the investigation.

###

TAB B

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement is entered into this 3rd day of January 2005, by and among (i) the United States of America, acting through the Department of Justice and on behalf of the United States Department of the Army (collectively, the "United States") and (ii) Lockheed Martin Missiles and Fire Control, a business unit of Lockheed Martin Corporation for itself and any of its parents, predecessors, successors, assigns, businesses, affiliates, subsidiaries, directors, officers, employees, agents, representatives, and shareholders (hereinafter, "Lockheed Martin"). The United States and Lockheed Martin are hereinafter all jointly referred to as the "Parties."

II. PREAMBLE

A. Lockheed Martin is a Maryland corporation with its headquarters located in Bethesda, Maryland.

B. In December 1999, the Defense Contract Audit Agency (the "DCAA") completed an audit (the "Audit Report") related to a Lockheed Martin disclosure of inadvertent mischarging on certain contracts between the United States and Lockheed Martin for both production and support of the Multiple Launch Rocket System.¹

C. Lockheed Martin has accepted some of the conclusions listed in the Audit Report but denies all allegations of fraud.

¹ The Audit Report is dated December 17, 1999 and officially identified as DCAA audit number 3311-99L17900003.

TAB B

D. For the purposes of this Settlement Agreement, the "Covered Conduct" means the conduct, causes of action, claims, and allegations contained in, or devolving from the Audit Report.

E. The Parties wish to avoid the time, expense, and risk of litigation by reaching a settlement of the allegations contained in the Audit Report as described below.

F. This Settlement Agreement is made in compromise of disputed claims. Neither the Settlement Agreement, its execution, nor the performance of any obligations under it, including any payments, nor the fact of the settlement, is intended to be, or shall be understood as, an acknowledgment of responsibility, admission of liability or wrongdoing, or other expression reflecting upon the merits of the dispute by the United States or Lockheed Martin.

III. AGREEMENTS

In reliance on the foregoing Recitals, and in consideration of the mutual promises, covenants and obligations of this Settlement Agreement, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Within thirty (30) business days after the execution of this Settlement Agreement, Lockheed Martin shall pay to the United States the sum of \$1,400,000.00 (one million, four hundred thousand dollars, and no cents) (the "Settlement Proceeds"). Payment shall be made by electronic funds transfer pursuant to written instructions to be provided by Michael F. Hertz or his designated representative.

2. Subject to the exceptions set forth below, in consideration of the obligations of Lockheed Martin set forth in this Settlement Agreement, and conditioned upon the payment in full by Lockheed Martin of the Settlement Proceeds, the United States hereby waives, releases, and forever discharges Lockheed Martin from any liability or claim the United States has under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Contract Disputes Act, 41 U.S.C. § 601 *et seq.*; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Truth in Negotiations Act, 10 U.S.C. § 2306a, or under common law, including, without limitation, payment by mistake, unjust enrichment, breach of contract, and fraud, for Covered Conduct.

3. The United States and Lockheed Martin agree that each will be responsible for its own attorneys' fees and all costs arising out of and relating to this action.

4. The United States specifically does not release Lockheed Martin, or any other entity or individual under this Settlement Agreement from (a) any criminal, civil or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code); (b) any claims of criminal liability of Lockheed Martin or any individual; (c) any administrative suspension or debarment action; (d) any liability for any express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services, provided by Lockheed Martin to the United States; (e) any liability to the United States (or its agencies) for any conduct other than the Covered Conduct; (f) any liability for failure to deliver goods or services due; and (g) any liabilities or obligations created by this Settlement Agreement or related to disputes and claims for the enforcement of this Settlement Agreement.

5. Each of the Parties agrees that each shall bear its own legal and other costs incurred in connection with this matter including the preparation and performance of this Settlement Agreement. Lockheed Martin agrees that all costs (as defined by Federal Acquisition Regulation ("FAR") 31.205-47) incurred by or on behalf of Lockheed Martin on or after July 20, 2000 in connection with (a) the matters covered by this Settlement Agreement; (b) the United States' audits and investigations of the matters covered by this Settlement Agreement; (c) Lockheed Martin's investigation and defense of the matters relating to the Covered Conduct; (d) the negotiation of this Settlement Agreement; and (e) the payments made to the United States pursuant to this Settlement Agreement shall be unallowable costs for government accounting purposes. Lockheed Martin shall reasonably estimate and separately account for all costs that are unallowable under this Settlement Agreement.

6. In consideration of the promises and obligations of this Settlement Agreement, Lockheed Martin fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of any kind and however denominated) which Lockheed Martin has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents related to or arising from the Covered Conduct and the United States' investigation and prosecution thereof.

7. Within ten (10) business days following receipt of the Settlement Proceeds, the United States Attorney's Office for the Northern District of Alabama will close all

investigations open as of this date associated with Lockheed Martin's Multiple Launch Rocket Systems.

8. With regard to any investigations related to the Multiple Launch Rocket Systems, the undersigned investigating agencies on behalf of the United States Army will make all reasonable best efforts to complete their investigations within four (4) months. Regardless, within such time, such investigators will meet with designated representatives of Lockheed Martin to discuss the allegations and evidence, if any, related to the investigations. The parties will make reasonable best efforts to cooperate in the exchange of relevant non-privileged information related to the investigation prior to the meeting. To the extent possible, the meeting shall be attended by the cognizant Procuring Contracting Officer, Program Manager or his/her deputy, and Army Command counsel.

9. With regard to any new matters not discussed herein related to the Multiple Launch Rocket System that are not otherwise disposed of in accordance with normal contract negotiations, the undersigned investigating agencies parties agree to use all reasonable best efforts to utilize the procedures set forth in paragraph 8 above, prior to initiating a formal referral to the Department of Justice.

10. Nothing in this agreement is intended or shall be interpreted as altering or amending the prosecutorial discretion, procedures, regulations, or authority of the United States to investigate any matter.

11. Lockheed Martin represents that this Settlement Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

12. Each person who signs this Settlement Agreement in a representative capacity warrants that he or she is duly authorized to do so. Further, each of the Parties (i) acknowledges that such party has been advised by competent legal counsel in connection with the execution of this Settlement Agreement and the accompanying releases, has read each and every paragraph of this Settlement Agreement, understands the respective rights and obligations set forth herein, and (ii) represents that the commitments, acknowledgment, representations, and promises set forth herein are freely and willingly undertaken and given.

13. This Settlement Agreement shall be governed and interpreted by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Settlement Agreement will be the United States District Court for the Northern District of Alabama.

14. This Settlement Agreement is effective on the date of signature of the last signatory to the Settlement Agreement.

15. This Settlement Agreement is binding on each and all of Lockheed Martin's successors, transferees, heirs, and assigns.

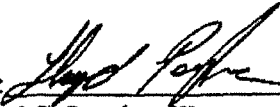
16. This document contains the full and complete agreement with respect to the matters covered herein. No modification of this Settlement Agreement shall be effective unless in writing and signed by the Parties.

17. This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

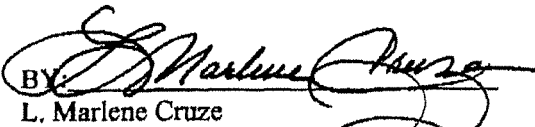
IN WITNESS WHEREOF, the Parties have executed the foregoing Settlement Agreement or counterparts thereof, intending to be bound.

UNITED STATES OF AMERICA

DATED: 22 DEC 2004

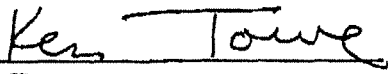
BY: 
Lloyd C. Peeples, III
Assistant U.S. Attorney
United States Attorney's Office
Northern District of Alabama
1801 Fourth Avenue North
Birmingham, AL 35203

DATED: January 3, 2005

BY: 
L. Marlene Cruze
US Army Aviation and Missile Command
Acquisition Center
Building 5303, 3rd Floor
Redstone Arsenal, AL 35898

LOCKHEED MARTIN CORPORATION

DATED: 20 DEC 2004

BY: 
Kenneth Towe
Director - Finance, Tactical Missiles
Lockheed Martin Missiles and Fire Control



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY CRIMINAL INVESTIGATION COMMAND
6010 6TH STREET
FORT BELVOIR, VA 22060-5506

September 16, 2008

Office of the Staff Judge Advocate

Honorable Elizabeth Dole
North Carolina Senate
ATTN: Mrs. Debbie King
310 New Bern Avenue
Suite 122
Raleigh, NC 27601

Dear Senator Dole:

This responds to your inquiry on behalf of Mr. Clarence Daniels concerning his request for the Report of Investigation (ROI) into allegations that Lockheed Martin defrauded the U.S. Government.

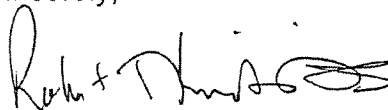
The investigations conducted by the United States Criminal Investigation Command (USACIDC) concerning Mr. Daniels' allegations were completed on April 27, 2005. Lockheed Martin was found to have defrauded the U.S. Government for a total of \$5,000,000 as well as various soldier risks. The investigations were referred for prosecution to the US Attorney's Office, Northern District of Alabama, who declined to prosecute the offenses, and felt the matter would best be handled through contractual settlements.

This office will treat Mr. Daniels' request for a copy of the Report of Investigations (ROI) as a Freedom of Information Act (FOIA) request and has forwarded the request to the U.S. Army Crime Records Center (USACRC), which is operated by USACIDC. They will review the inquiry, conduct a search of their records and respond directly to Mr. Daniels. Because of the volume of requests (approximately 150-200 per week), USACRC works requests on a first come, first serve basis. Should Mr. Daniels have any questions regarding the status of his request, he may write to: Director, U.S. Army Crime Records Center, Attention: FOIA/PA Division, 6010 6th Street, Fort Belvoir, Virginia 22060-5585, or he may call (800) 511-4786.

TAB B

I trust this information will assist you in responding to your constituent and concludes your inquiry. If not, kindly advise. The USACIDC point of contact for this action is Ms. Janice L. Mitchell at (703) 806-0363.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert T. Kincaid, III". The signature is fluid and cursive, with a large initial "R" and a distinct "T" and "K".

Robert T. Kincaid, III
Major, U.S. Army
Deputy Staff Judge Advocate

TAB B

Mr. Clarence N. Daniels
1503 Sparkman DR NW APT: N109
Huntsville, AL 35816
October 3, 2008

The Honorable Elizabeth Dole
310 New Bern Avenue
Suite 122
Raleigh, NC 27601

Dear Senator Dole,

The Department of the Army, (DA) Office of the Staff Judge Advocate's, (SJA) 16 Sep 08 response (Attachment 01), purporting to have concluded the Report of Investigation as required by the Office of Special Counsel, (OSC) is incredible.

The SJA response confuses a Freedom of Information Act, (FOIA) request with the statutory requirements of 5 U.S.C. § 1213(c) and (d). This statute requires a Report of Investigation signed by the Secretary of the Army within 60 days after the written request for an investigation by the OSC. The report required under OSC file no. DI-00-1499 is for ultimate transmittal to the President and to a public file. The SJA investigation in no way relieves the Army Secretary of these specific reporting requirements. The OSC request for a report of investigation was issued to DA on 20 Aug 03, which was more than five years ago with no Army Secretary response to date.

I submitted additional allegations to the OSC on 30 Sep 05 as a supplement to file DI-00-1499, (Attachment 02). These additional allegations represent at least \$84 million more in both contractor and complicit government employee collusive fraudulent acts I alleged in DI-00-1499.

The SJA purports in its 16 Sep 08 response to have concluded its investigations of Lockheed Martin (Lockheed), with the Alabama US Attorney's office in April of 2005, in light of this fact, the SJA could not have possibly included my significant allegations of 30 Sep 05 as part of its purported investigations or any contractual settlement negotiations.

I am bemused by the thought of any credible DA or SJA civil or criminal investigations being conducted or any contract settlements having been made, without my active assistance by using existing documented evidence and my first-hand knowledge of the fraudulent acts. Considering the magnitude and complexity of the allegations in DI-00-1499 and its September 2005 supplement, no equitable contractual settlements could have reasonably been made by the SJA without my active assistance using extensive documented evidence and full unadulterated cost disclosures from Lockheed.

TAB

The SJA states it found that Lockheed defrauded the Government. My allegations expressly state in most cases that Lockheed in collusion with both past and present perfidious government civilian and military management officials committed the fraudulent acts. By way of example, the fraudulent contract modification increase of \$4.5 million to fixed price contract no. DAAH01-98-C-0138 could not have possibly been so skillfully hidden in the aggregate total contract amount in such an insidious way without the full knowledge, intent, and facilitation of government employees preparing the modification. The SJA investigation would insinuate to unknowing government investigators or auditors that Lockheed may have acted alone in this and other fraud, as this example illustrates Lockheed could not have possibly acted alone.

Other fraudulent acts included AMCOM and Lockheed former and current management employee collusion, criminal negligence, and covert participation in the contract delivery and improper government acceptance of more than 100 nonconforming M270A1 and HIMARS tactical field artillery launcher systems. These launcher systems were callously fielded and deployed to a combat zone doing Operation Iraqi Freedom, even though the launcher systems were fully known to display both operational and unmitigated catastrophic safety hazards that posed substantial tactical performance flaws and horrific safety risks to the launcher crews and also posed a substantial risk of catastrophic loss to the civilian population and government property while in theater and in hostile tactical environments, (i.e., inadvertent rocket launches, electrical shock, and un-commanded launcher turret movement).

Lockheed continues to defraud the Government concerning my allegations contained in DI-00-1499, by way of example, a negotiated Settlement Agreement (Attachment 03), in the amount of \$1.4 million was executed on 3 Jan 05, around or about July of 2006 Lockheed attempts to recoup the negotiated settlement amount through its overhead costs even though the negotiated agreement expressly forbade it in a brazen violation of its negotiated agreement with the Government. This intentional unlawful act would also violate any reasonable terms of any deferred or non-prosecution agreements that were likely made between the Department of Justice (DOJ), and Lockheed as a direct result of the previous SJA investigation which found that Lockheed Martin defrauded the Government in the amount of \$5 million with no apparent SJA or DOJ prosecutions or investigations of complicit government perpetrators whatsoever.

The most recent employment of Mr. Jim Byrne the former Deputy for the U.S. Office of Special Counsel, by Lockheed's corporate legal office also does not bode well toward Lockheed's apparent motive, ethical resolve or ethical judgment in his hiring.

My original questions concerning the current status and DA projected completion date of the delinquent report required by statute remain completely unanswered while DA, AMCOM, and Lockheed past and present management officials remain completely unaccountable for their intentional procurement fraud, theft by deception, recreant acts of omission, and criminal dereliction of their official, ethical, and fiduciary duties in apparent exchange for promotion, private gain, or post government employment through Lockheed.

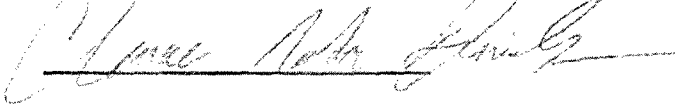
Any additional assistance you can provide me in obtaining the current specific status of the Secretary of the Army's Report of Investigation as required by 5 U.S.C. § 1213(c) and (d), the required mitigation of known safety hazards in fielded M270A1 and HIMARS launcher systems, the existence of any current DOJ deferred or non-prosecution agreements with Lockheed, along with the recoupment and final disposition of the \$5 million that the SJA investigation determined was defrauded the Government by Lockheed would be greatly appreciated. Your office continued indulgence and extraordinary vigilance in this most significant matter would again be greatly appreciated.

Thank you once again Senator Dole for your positively indispensable support.

Declaration

I, CLARENCE N. DANIELS, do hereby declare:

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.



October 3, 2008

SIGNATURE

DATE

CF, w/o Attachments,

Hon. Robert (Bud) Cramer, U.S. Representative, Fifth Congressional District
Hon. Artur Davis, U.S. Representative, Seventh Congressional District
Hon. Richard Shelby, U.S. Senator
Hon. Michael B. Mukasey, U.S. Attorney General
Hon. Alice Martin, US Attorney for the Northern District of Alabama
Hon. Robert Gates, Secretary of Defense
Hon. Pete Geren, Secretary of the Army
Hon. Scott Bloch, US Office of Special Counsel
US Dept. of Justice, Criminal Division
US Dept. of Justice, Office for Victims of Crime
President's Council on Integrity and Efficiency
House Judiciary Committee
House Armed Services Committee
Senate Judiciary Committee
Senate Armed Services Committee
Oversight and Government Reform Committee
GAO, FraudNet
Federal Bureau of Investigation, Tip-line, Washington, D.C.
DA, USACIDC, Robert T. Kincaid
Director, U.S. Army Crime Records Center

TAB B

Mr. Clarence N. Daniels
1503 Sparkman DR NW APT: N109
Huntsville, AL 35816
October 17, 2008

The Honorable Elizabeth Dole
310 New Bern Avenue
Suite 122
Raleigh, NC 27601

Dear Senator Dole,

The recent convening of an administrative AR 15-6 investigation (Attachment 01), into my disclosures delineated in Office of Special Counsel (OSC), case file number DI-00-1499 by the U.S. Army Aviation and Missile Command (AMCOM), almost nine years after I raised the allegations to both AMCOM and Program Executive Office (PEO), management and some five years after the OSC mandated Army Secretary investigation report due date defies reason. This administrative AR 15-6 investigation lacks an explicit legal purpose in the Secretary of the Army's immediate fulfillment of the 5 year delinquent statutory requirements of 5 U.S.C. § 1213(c) and (d).

Considering the fact that the previous Army Staff Judge Advocate's (SJA), and the Department of Justice (DOJ), investigation has already concluded that Lockheed Martin defrauded the Government of at least \$5 million concerning my allegations included in DI-00-1499 and it has been almost nine years since I raised these same allegations to both AMCOM and PEO management, this newly convened administrative AR 15-6 investigation of DI-00-1499 certainly appears to be a AMCOM and PEO management last ditch attempt at an official whitewashing of the allegations or a deliberate attempt to provide cover for suspected past and present government perpetrators that were complicit in the Lockheed Martin fraudulent schemes and ruses that to the best of my knowledge have yet to be fully investigated.

The convening of an administrative AR 15-6 investigation into DI-00-1499 by AMCOM and PEO management at this point in time is yet another loathsome example of AMCOM and PEO senior management malingering to dutifully and lawfully act on what has been a longtime deluge of pervasive and enduring collusive procurement fraud, subversion of government property, despotism, incompetence, recreant dereliction of duty and overwhelming prima facie evidence of past and present government employee systemic criminal conduct with intent to defraud the US Army and its Foreign Military Sales (FMS), customers.

In the face of the purported SJA investigation of my DI-00-1499 allegations which was purportedly concluded on April 27, 2005, I believe a full criminal investigation of the suspected government perpetrators that were complicit in the Lockheed Martin fraud is in

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order. Any newly proposed investigations of DI-00-1499 and its 30 Sep 05 Supplement of any sort should be immediately and independently conducted at the Office of the Secretary of Defense, (OSD) level or higher.

No newly proposed investigations initiated at this point should be conducted or supervised by AMCOM and PEO management officials under any circumstance. This new administrative AR 15-6 investigation may very well be conducted or supervised by the same AMCOM and PEO management officials that have taken part or have knowingly acquiesced to the actual Lockheed Martin fraud itself, including their participation in illegal whistleblower reprisals and prohibited personnel practices.

The ceaseless mission of the U.S. Armed Forces in defense our U.S. Constitution and the safety and welfare of all the men and women soldiers, sailors, and airmen which comprise these indispensable forces can never be allowed to be needlessly compromised or callously exploited solely for illicit personal gain, profit, or expediency.

Senator Dole, while the past nine years of Government service has taught me far more about the failings of human nature than I would have ever cared to know I am amazed and extremely grateful that you and your office have taken serious time and professional effort to answer the call of a longsuffering citizen in Alabama.

Thank you once again Senator Dole.

Sincerely,



Clarence N. Daniels

CF, with Attachment,

Hon. Robert (Bud), Cramer, U.S. Representative, Fifth Congressional District
Hon. Artur Davis, U.S. Representative, Seventh Congressional District
Hon. Richard Shelby, U.S. Senator
Hon. Robert Gates, Secretary of Defense
Hon. Pete Geren, Secretary of the Army
Hon. Scott Bloch, US Office of Special Counsel
US Dept. of Justice, Criminal Division
House Judiciary Committee
House Armed Services Committee
Senate Judiciary Committee
Senate Armed Services Committee
Oversight and Government Reform Committee
GAO, FraudNet
Federal Bureau of Investigation, Tip-line, Washington, D.C.



U. S. Department of Justice

Office of the Inspector General

October 21, 2008

Clarence N. Daniels
1503 Sparkman Drive, NW, #B109
Huntsville, AL 35816

Dear Mr. Daniels:

The purpose of this letter is to acknowledge receipt of your recent correspondence regarding William Charles and others. The staff of the Investigations Division has reviewed the issues that you raised.

The Office of the Inspector General (OIG) receives a high volume of complaints every day for review and handling. Because the OIG has limited staff and resources we are not able to investigate every complaint. Only those complaints involving criminally prosecutable misconduct and the most egregious administrative misconduct can be accepted for investigation. Many other issues can and should be addressed by the management levels of the involved components. We have determined that the Defense Criminal Investigative Service management levels should review your complaint. Therefore, your complaint has been forwarded to:

U.S. Department of Defense
Defense Criminal Investigative Service
201 12th Street
Arlington, VA 22202-5408

Any further correspondence regarding this matter should be directed to that office.

I hope this answers any questions you have relative to this matter.

Sincerely,

Roger M. Williams
Special Agent in Charge
of Operations
Investigations Division

TAB B

Daniels, Clarence N CIV USA AMC

From: Daniels, Clarence N CIV USA AMC
Sent: Saturday, October 18, 2008 9:25 AM
To: 'Myers, Malia'
Cc: Baddley, Laura L CIV USA USACIDC; 'fraudnet@gao.gov'; 'npfff@usdoj.gov'; 'inspector.general@usdoj.gov'; 'OIGHotline@opm.gov'; 'oversight@opm.gov'; 'criminal.division@usdoj.gov'; 'hotline@dodig.mil'; 'inspector.general@eeoc.gov'; Daniels, Clarence N CIV USA AMC
Subject: Supplemental documentation for OSC files DI-00-1499 and DI-09-0045. (UNCLASSIFIED)
Attachments: Dole letter 17 Oct 08.doc; Information Request concerning DA Secretary Report of Investigation of DI-00-1499. (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Malia,

Please add the attached letter and emails to both OSC case files DI-00-1499 and DI-09-0045.

Considering their timeliness of convening of an administrative AR 15-6 investigation, I wonder where in the world the AMCOM and PEO Management could have thought that I had been for the past nine years, out ballroom dancing with Amelia Earhart?

Please call or write me at my home address if you have any questions.

Thanks, Clarence
256 830-1967

Notice: This E-mail (including attachments) is covered by the Electronic Communications Privacy Act, 18 USC 2510-2521, is confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply to the sender that you have received the message in error and then delete it.

Classification: UNCLASSIFIED
Caveats: NONE

Attachment 01
Page 1 of 4

Daniels, Clarence N CIV USA AMC

From: Daniels, Clarence N CIV USA AMC
Sent: Thursday, October 16, 2008 8:59 AM
To: Richardson, Randy J Mr CIV USA AMC
Cc: 'Myers, Malia'; Baddley, Laura L CIV USA USACIDC; Myles, James R MG MIL USA AMC; Allen, Fred W CIV USA AMC; 'fraudnet@gao.gov'; 'npftf@usdoj.gov'; 'inspector.general@usdoj.gov'; 'OIGHotline@opm.gov'; 'oversight@opm.gov'; 'criminal.division@usdoj.gov'; 'hotline@dodig.mil'; 'inspector.general@eeoc.gov'
Subject: Information Request concerning DA Secretary Report of Investigation of DI-00-1499. (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Randy,

The OSC directed an Army Secretary investigation of DI-00-1499 more than 5 years ago with a statutory due date 60 days after the request, do you have any idea what happened between then and now?

Thanks, Clarence

-----Original Message-----

From: Richardson, Randy J Mr CIV USA AMC
Sent: Wednesday, October 15, 2008 5:44 PM
To: Daniels, Clarence N CIV USA AMC
Subject: RE: Information/Statement Request concerning OSC, DI-00-1499. (UNCLASSIFIED)

Clarence

Thanks for the response.

I wanted to make sure you understood about the AR 15-6 investigation and my role. The investigation is part of the overall Office of Special Counsel investigation into the allegations. They directed that the Army conduct an administrative investigation (AR 15-6) into the allegations I listed below. I was assigned as the investigative officer by MG Myles.

I took your response to mean you do not have anything further to add to what you have already submitted.

Thanks again for your reply.

Randy

-----Original Message-----

From: Daniels, Clarence N CIV USA AMC
Sent: Tuesday, October 14, 2008 5:32 PM
To: Richardson, Randy J Mr CIV USA AMC
Cc: 'Myers, Malia'; Baddley, Laura L CIV USA USACIDC; 'doj.prao@usdoj.gov'; 'OIGHotline@opm.gov'; 'fraudnet@gao.gov'; Myles, James R MG MIL USA AMC; 'oversight@opm.gov'; 'inspector.general@usdoj.gov'; 'criminal.division@usdoj.gov'; 'hotline@dodig.mil'; Allen, Fred W CIV USA AMC
Subject: Information/Statement Request concerning OSC, DI-00-1499. (UNCLASSIFIED)

TAB B

Classification: UNCLASSIFIED

Caveats: NONE

Randy,

All affidavits and privacy statements concerning my disclosures delineated in Office of Special Counsel (OSC) case DI-00-1499, including those of DA management whistleblower reprisals and prohibited personnel practices, are a matter of record with the OSC and the CID.

The required Army Secretary Report of Investigation and DA reporting of my allegations contained in OSC case DI-00-1499 is more than 5 years past due the completion date required by statute.

I have no present knowledge of your responsibility of conducting a AR 15-6 investigation into the issues and allegations that I raised with both AMCOM and PEO management almost nine years ago and some five years after the OSC required DA Secretary report of investigation due date.

Any on-going investigations that I would be aware of at this point in time would be at the Department of Army or Congressional level. The following list of individuals may be able to provide you with additional information concerning the 5 year delinquent DA Secretary Report of Investigation or any other on-going investigations or Congressional inquiries.

Malia S. Myers
Attorney
U.S. Office of Special Counsel
(202) 254-3625

Baddley, Laura L
Special Agent
USA USACIDC
(256) 876-0770

Alice H. Martin
US Attorney, Northern District of Alabama
1801 Fourth Ave., North
Birmingham, AL 35203-2101
(205)244-2001

Robert Kincaid, III
Major, US Army
Deputy Staff Judge Advocate
USACIDC
(703) 806-0363

Thank you,
Clarence N. Daniels
Contract Specialist
256-876-8980

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-----Original Message-----

TAB B

From: Richardson, Randy J Mr CIV USA AMC
Sent: Tuesday, October 14, 2008 10:08 AM
To: Daniels, Clarence N CIV USA AMC
Subject: Information/Statement Request

Clarence

1. As you may be aware, MG Myles assigned me the responsibility of conducting a AR 15-6 investigation into the issues and allegations you raised with the Office of Special Counsel. Specifically, the allegations that I have been directed to address are as follows:

a. The Multiple Launch Rocket System (MLRS) Project Office utilized unauthorized Technical Direction Letters (TDLs) to improperly grant Lockheed Martin additional funding. Specific elements of the allegation are:

- The Project Office issued several TDLs under the Industrial and Engineering Services (IES) contract for tasks that were already included in the price of the production contract.

- The Project Office approved TDLs for tasks which the government had funded under research and development contracts DAAH01-92-C-0432 and DAAH01-95-C-0329.

- Improperly issued TDLs included TDL TR-99-001A (revision B), TDL LM-98-03, TDL IL-99-01, TDL PT-P-99-020 and TDL LO-99-05.

b. The Government Accepted Non-Conforming and Unsafe MLRS Launchers from Lockheed Martin. Specific elements of the allegation are:

- AMCOM accepted and deployed to the field M270A1 launchers that did not satisfy critical safety requirements, including the "uncommanded cage movement", that Program Office knew about the deficiencies in 2000, did not alert the contracting office until two years had elapsed and authorized the contractor to continue deliveries of unsafe launchers.

- Lockheed Martin failed to provide a safety assessment report for the M270A1 launcher as it was required to do under the contract. The MLRS Project Office improperly expended appropriated funds to contract with another contractor to provide an Independent Safety Assessment for which Lockheed Martin was contractually obligated.

- Lockheed Martin failed to provide a safety assessment report for the M270A1 launcher as it was required to do under the contract. The MLRS Project Office improperly expended appropriated funds to contract with another contractor to provide an Independent Safety Assessment for which Lockheed Martin was contractually obligated.

- Lockheed Martin presented the Government with a safety assessment in October 2002 that reported more serious deficiencies than previously reported, some deemed to be "catastrophic", and that based on this new information the Safety Office concluded that the M270A1 launchers were not compliant with MIL-PRF-35500. The information in the safety report caused the Contracting Officer to halt acceptance of the launchers. The launchers were defective and useless to the military until the Government expended more money to render the launchers safe and compliant.

c. The Government deployed launchers that pose a substantial and specific danger to the safety of the soldiers; and The Army relied on Fielding Operating Restrictions to mitigate potentially catastrophic dangers rather than design features as required by Military Standard 882 (MIL-STD-882).

TFB B

2. If you would like to provide me with information to include or consider in the investigation, I will be happy to get a sworn statement and Privacy Act Statement from you to include in the file. The statement will need to be entered on the attached DA Form 2823, signed by you and witnessed/signed by me (you will keep a copy signed by both of us for your records) and I will need a signed Privacy Act Statement (also attached) as well.

3. If you have any questions or need further information, please contact me at the email address above, or at 876-6659.

Thank you.

Randy Richardson
Investigative Officer
Classification: UNCLASSIFIED
Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE

TAB B

ELIZABETH DOLE
NORTH CAROLINA

555 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-6342
FAX: (202) 224-1100

United States Senate

WASHINGTON, DC 20510-3307

COMMITTEES:
ARMED SERVICES
BANKING, HOUSING, AND
URBAN AFFAIRS
SMALL BUSINESS AND
ENTREPRENEURSHIP
SPECIAL COMMITTEE ON AGING

October 8, 2008

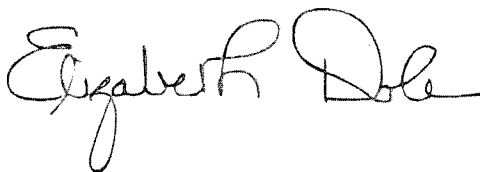
Mr. Clarence Daniels
1503 Sparkman Drive, NW
Apartment N109
Huntsville, Alabama 35816

Dear Mr. Daniels:

I recently received the additional documentation you sent to me that relates to your pending case with the Department of the Army. Thank you so much for providing this update.

Your case is very important to me, and I have forwarded this most recent information to the appropriate officials. Whenever you have a question or further updates that you feel will be helpful to your claim, please do not hesitate to contact Mrs. Debbie King in my Raleigh office at (919) 856-4630.

Sincerely,



ED/dck

TAB B

GREENVILLE OFFICE:
306 SOUTH EVANS STREET
GREENVILLE, NC 27858
(252) 329-1083
FAX: (252) 329-1087

HENDERSONVILLE OFFICE:
401 NORTH MAIN STREET
SUITE 200
HENDERSONVILLE, NC 28792
(828) 698-3747
FAX: (828) 698-1267

RALEIGH OFFICE:
310 NEW BERN AVENUE
SUITE 122
RALEIGH, NC 27601
(919) 856-4630
FAX: (919) 856-4052
TOLL FREE: 866-420-6083

SALISBURY OFFICE:
225 NORTH MAIN STREET
SUITE 304
SALISBURY, NC 28144
(704) 633-6011
FAX: (704) 633-2937
TOLL FREE: 866-420-6084