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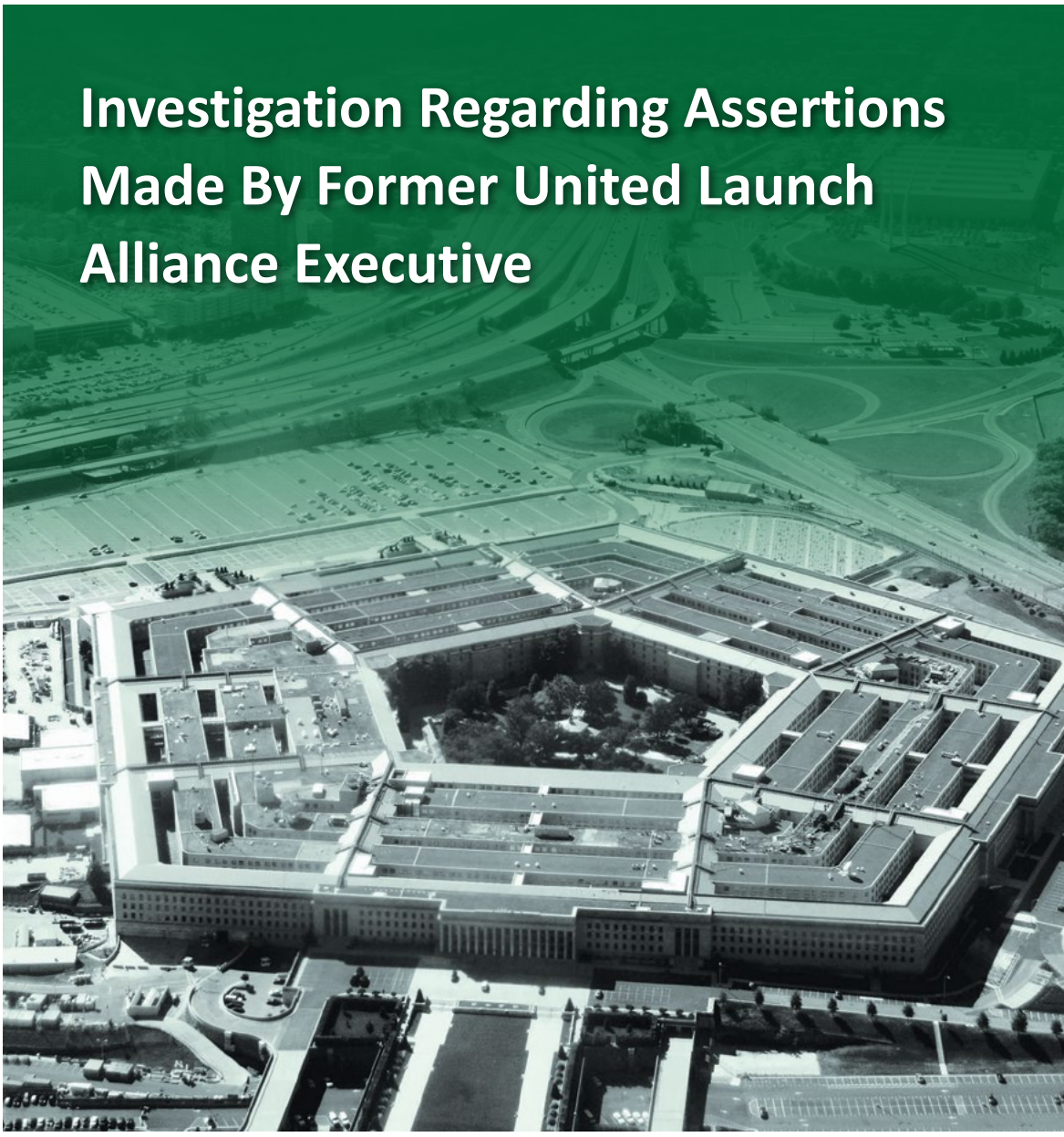
INSPECTOR GENERAL

U.S. Department of Defense

DECEMBER 5, 2016

Investigation Regarding Assertions Made By Former United Launch Alliance Executive



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Report No. DODIG-2017-020 December 5, 2016

EXECUTIVE SUMMARY

The Department of Defense Office of Inspector General (DoD OIG) conducted this investigation at the request of the Secretary of Defense regarding assertions made by Mr. Brett Tobey, United Launch Alliance's (ULA) former Vice-President of Engineering. His assertions were related to competition for National Security Space (NSS) launch missions, and whether the United States Air Force (USAF) Space and Missile Systems Center (SMC) awarded contracts to ULA in accordance with DoD and Federal regulations.

On March 15, 2016, the University of Colorado-Boulder's Aerospace Engineering Sciences Department hosted a seminar featuring Mr. Tobey, who spoke about "ULA's Competitive Transformation" and the Evolved Expendable Launch Vehicle (EELV) Program.[1] During his presentation, Mr. Tobey made several assertions related to the EELV Program, implying that:

1) U.S. Senator John McCain said that ULA was "hiding five RD-180 engines" in its inventory to transfer them from NSS launch missions to commercial launch missions to influence congressional legislation;

2) contracts for NSS launches were not awarded fairly because the DoD gave an unfair advantage ("lean the field") to ULA over other contractors;

3) a conversation occurred between the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD[AT&L]) and the Lockheed Martin Chief Executive Officer (CEO) concerning the replacement of RD-180 rocket engines and a need to find a way to "silence" Senator McCain (keep him from attacking the DoD) regarding rocket engines manufactured in the Russian Federation; and

4) the DoD was "not happy" that ULA did not submit a proposal for a competitive launch service solicitation (Phase 1A Global Positioning System [GPS] III) because the DoD gave ULA an advantage over other contractors.

Our investigation began with an in-depth review of Mr. Tobey's assertions (audio recording and its transcript). Based on our review, we developed four investigative objectives. To meet these objectives, we performed interviews of both DoD and contractor personnel and reviewed documents and contract awards.

First, did ULA improperly transfer five RD-180 rocket engines from NSS launch missions to commercial launch missions to influence congressional legislation? We determined that ULA did not improperly transfer five RD-180 rocket engines from NSS launch missions to commercial launch missions because: (1) Mr. Tobey said that he misspoke during the

[1] The Evolved Expendable Launch Vehicle program (EELV) is a United States Air Force (USAF) program that supports the National Mission Model. It was implemented by the Air Force in 1995 to reduce the cost of operational space launches, to improve reliability over the heritage launch system, and to create a more 'commercial-like' procurement process.

presentation; he said that RD-180 rocket engine allocation strategy was not his area of expertise; (2) these rocket engines were the property of ULA and the DoD had no control or property interests in the rocket engines; (3) the DoD contracted with ULA for NSS launch services, not for the purchase of specific rocket engines for NSS launch missions; and (4) the FY 2015 and FY 2016 National Defense Authorization Acts (NDAA) restrictions[2] imposed by Congress on rocket engines manufactured in the Russian Federation did not apply to the five rocket engines in question because they were purchased prior to the February 1, 2014 deadline imposed by the FY 2015 NDAA. Therefore, we found no basis to support the assertion that ULA improperly transferred five RD-180 rocket engines from NSS launch missions to commercial launch missions.

Second, did the DoD provide an unfair advantage ("lean the field") to ULA over other contractors during the procurement process for NSS launch contracts and was there collusion between DoD and ULA officials pertaining to the Phase 1 Block Buy and Phase 1A GPS III contracts for NSS launch missions? We determined that the DoD did not give an unfair advantage and did not collude with ULA for NSS launch contracts because: (1) Mr. Tobey told us that he misspoke during the presentation and that he did not mean to imply there was an irregularity in the space launch contracting process; (2) after multiple interviews of DoD and ULA personnel and our reviews of acquisition planning documentation, contracts, and internal DoD and ULA correspondence, we found no evidence of collusion; (3) the DoD's implementation of its acquisition strategy was designed to introduce competition for the launch services contracts; and (4) ULA's decision not to submit a proposal for the contract is inconsistent with the assertion that there was collusion between DoD and ULA.

Third, did the USD(AT&L) and the Lockheed Martin CEO violate the Procurement Integrity Act by engaging in a conversation concerning an acquisition strategy for a U.S.-made rocket engine to replace RD 180 rocket engines? Furthermore, did the USD(AT&L) and the Lockheed Martin CEO discuss a need to find a way to "silence" Senator McCain (keep him from attacking DoD) regarding rocket engines manufactured in the Russian Federation? We reviewed e-mails and calendar entries and performed multiple interviews of DoD and contractor personnel, including the USD(AT&L) and the Lockheed Martin CEO. Both the USD(AT&L) and the Lockheed Martin CEO denied discussing procurement information on a replacement for the RD-180 rocket engine. The USD(AT&L) and the Lockheed Martin CEO also denied discussing "silencing" Senator McCain. Based on our interviews and the review of e-mails and calendar entries, we found no evidence that the two violated the Procurement Integrity Act.[3]

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[2] The NDAA provisions effectively limit the number of Russian RD-180 rocket engines that can be used in EELV space launches. The Secretary of Defense can waive the prohibition on awarding or renewing contracts for EELV space launches using rocket engines designed or manufactured in the Russian Federation if necessary for national security interests and launch services could not be obtained at a fair and reasonable price without the use of rocket engines designed or manufactured in the Russian Federation. The NDAA provisions except from the prohibition the placement of orders or exercise of options under contract FA8811-13-C-003 awarded December 18, 2013; contracts awarded for space launch that use not more than five rocket engines designed or manufactured in the Russian Federation that prior to February 1, 2014, were fully paid for by the contractor or covered by a legal commitment of the contractor to fully pay; contracts not covered that include the use of not more than 4 additional rocket engines designed or manufactured in the Russian Federation.

[3] The Procurement Integrity Act (Section 2101-2107, title 41, United States Code [41 U.S.C. §§ 2101-2107]) prohibits the release of source selection and contractor bid or proposal information. For further information on the Procurement Integrity Act, refer to 41 U.S.C. § 2102: Prohibitions on disclosing and obtaining procurement information, or visit http://uscode.house.gov/view.xhtml?req=(title:41 section:2102 edition:prelim).

Fourth, did ULA violate its contractual obligations by choosing not to respond to Request for Proposal (RFP) FA8811-16-C-0001, (hereafter referred to as the "Phase 1A GPS III contract")? Based on multiple interviews of DoD acquisition personnel and ULA personnel, and reviews of contracts, Other Transaction Authorities (OTAs),[4] and source selection documentation, we determined that: (1) the DoD's acquisition process was fair and equitable and (2) ULA did not have an obligation to submit proposals for competitive launch contracts.

During the DoD OIG team's interviews of Mr. Tobey, he recanted the assertions he made during his March 15, 2016 presentation that gave rise to this investigation. Mr. Tobey said that there was no factual basis for the assertions he made during his presentation and characterized his assertions as postulation. Specifically, he stated:

> I told the story with drama and my, you know, basically not perception, but my postulation of what might be happening at levels that I have no connection to...I'm postulating of telling about a political fight, with generalities for students, without the background of precise facts...I postulated about a lot of things that were happening not based upon fact, having no indication that the comments that I was making could go viral.

When asked the reasons he made the assertions, Mr. Tobey stated:

> I've presented at the college forum for long enough and to come up with a compelling, entertaining topic is necessary in order to keep the college students engaged and off of their iPhones. [Paragraphs omitted] [i]f you listen to it (the presentation) without the context of knowing that I'm a newbie to the industry talking to a bunch of college kids, some of them doing research work for ULA, and trying to keep them engaged and off of their iPhones, this is -- that was the mode I was in of adding this drama. If I had spent an hour and told them about my responsibility of reshaping ULA's workforce and a standardization of tools, I don't think I would have an engaged audience. I – this [*sic*] was purely speculation and postulation -- and adding drama and this idea to a political environment that's probably more documented in op-eds. The tone of my presentation was that of more of an op-ed than even a rational argument or article.

He went on to say:

> Again, my comments were made in a classroom environment to a -- what I believed was a private set of students and professors, where I felt very comfortable and got into a excessively casual tone of discussion with them. Those comments were then recorded, put out on the Internet, transcripted in, put into transcripts, quoted in sound bites that make them very damaging to ULA. And for that, I'm very sorry.

[4] OTA agreements are legally binding instruments that are generally not subject to the Federal laws and regulations governing procurement contracts, such as the Federal Acquisition Regulation (FAR). For a more detailed explanation, refer to Appendix A.

BACKGROUND

On March 15, 2016, the University of Colorado-Boulder's Aerospace Engineering Sciences Department hosted a seminar featuring Mr. Brett Tobey,[5] United Launch Alliance's (ULA) then Vice-President of Engineering, who spoke about "ULA's Competitive Transformation" and the Evolved Expendable Launch Vehicle (EELV) Program. Mr. Tobey made several assertions implying that:

(1) U.S. Senator John McCain said that ULA was "hiding five RD-180 engines" in its inventory to transfer them from National Security Space (NSS) launch missions to commercial launch missions to influence congressional legislation;

(2) NSS launch contracts were not awarded fairly because the DoD gave an unfair advantage ("lean the field") to ULA over other contractors;

(3) a conversation occurred between the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD[AT&L]) and the Lockheed Martin Chief Executive Officer (CEO) concerning the replacement of RD-180 rocket engines and a need to find a way to "silence" Senator McCain (keep him from attacking the DoD) regarding rocket engines manufactured in the Russian Federation; and

(4) the DoD was "not happy" that ULA did not submit a proposal for a competitive launch mission solicitation (Phase 1A Global Positioning System [GPS] III[6]) because the DoD gave ULA an advantage over other contractors.

An unidentified person in the audience made an audio recording of Mr. Tobey's presentation, uploaded the recording to the SoundCloud website, and a hyperlink to the recording was posted to the SpaceNews website.[7] This recording received media attention, resulting in articles stating that Mr. Tobey's departure from ULA as Vice President of Engineering was a result of remarks he made during an Aerospace Engineering Sciences seminar at the University of Colorado-Boulder. Upon Mr. Tobey's resignation, media outlets reported that ULA's CEO disavowed Mr. Tobey's remarks and described the statements as "inaccurate and not aligned with the direction of ULA company views." On March 17, 2016, Senator McCain stated during a congressional hearing that disturbing statements were made by a senior executive of ULA that raised "troubling questions about the nature of the relationship between the DoD and ULA." He added that the Senate Armed Services Committee treats any implication that the Department showed

[5] Mr. Tobey is an active University of Colorado-Boulder alumnus where he earned both undergraduate and graduate degrees. He participated in the university's engineering program, the Colorado Space Grant Consortium, and gave presentations at the university from 1983 through 2015. He became an employee of ULA in or around September 2015.
[6] In 2016, the SMC contracting officer awarded the first competitive contract for the EELV program. The SMC contracting officer awarded contract FA8811-16-C-0001 (Phase 1A GPS III contract) to Space Exploration Technologies Corporation (SpaceX) on April 27, 2016, for $82.7 million. SpaceX will provide the Government with services such as launch vehicle production and mission integration for the Phase 1A GPS III mission.
[7] For further information on the recording from SpaceNews visit http://spacenews.com/ula-intends-to-lower-its-costs-and-raise-its-cool-to-compete-with-spacex/.

"favoritism" to a major defense contractor or that "efforts have been made to silence members of Congress" with the utmost seriousness. Senator McCain requested that the Secretary of Defense investigate these statements and take action wherever appropriate.

Subsequently, on March 17, 2016, the Secretary of Defense requested that the DoD OIG investigate Mr. Tobey's assertions relating to competition for NSS launch contracts and whether contracts were awarded to ULA in accordance with Federal and DoD regulations. We agreed to conduct this investigation.

Evolved Expendable Launch Vehicle and the Establishment of ULA

The Evolved Expendable Launch Vehicle program (EELV) is a United States Air Force (USAF) program that supports the National Mission Model.[8] It was implemented by the USAF in 1995, to reduce the cost of operational space launches, to improve reliability over the heritage launch system, and to create a more 'commercial-like' procurement process.

In 2005, the DoD revised its EELV acquisition strategy to reflect the collapse of the commercial launch market and the ensuing erosion of the industrial base, which DoD believed threatened its assured access to space. In acknowledging the government's role as the primary EELV customer, the new strategy maintained assured access to space by funding two product lines of launch vehicles[9] - Boeing's Delta IV launch vehicle and Lockheed Martin's Atlas V launch vehicle.

In May 2005, Boeing Launch Services and Lockheed Martin Space Systems announced an agreement to create a joint venture, ULA, to combine production, engineering, tests, and launch operations associated with U.S. Government launches. The joint venture led to a single launch services provider because, at the time, there was an absence of other viable competitors.

ULA provides space launch services for commercial, civil, and government (NSS) launch customers. When assigning specific rocket engines to fulfill launch services contracts, in its ordinary course of business, ULA does not distinguish between commercial and government missions and uses a "first in, first out" asset management method for its RD-180 rocket engines.

The majority of EELV launches are performed by ULA's Atlas V family of launch vehicles, which uses the RD-180 rocket engine. The RD-180 rocket engine is manufactured in the Russian Federation.[10] In 2014, Congress expressed its intent to mitigate the DoD's reliance on

[8] The National Mission Model is a seven-year, fiscal forecast of all national (DoD, National Reconnaissance, civil and commercial) missions/spacecraft requiring a launch on the Eastern Range (Cape Canaveral Air Force Station, Florida) and Western Range (Vandenberg Air Force Base, California).
[9] GAO Report No. 14-259T, "Evolved Expendable Launch Vehicle; Introducing Competition into National Security Space Launch Acquisitions: Testimony Before the Committee on Appropriations," March 2014.
[10] The RD-180 rocket engine is produced by NPO Energomash and sold through RD AMROSS, a joint venture between Pratt & Whitney and NPO Energomash.

rocket engines manufactured in the Russian Federation through the provisions of Public Law 113-291, "Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015" (FY 2015 NDAA), that limited the use and purchase of the RD-180 rocket engines for EELV space launches. These limits were effectively overwritten for one year by Public Law 114-113, "Consolidated Appropriations Act, 2016."[11]

SCOPE

We performed an in-depth review of Mr. Tobey's presentation (audio recording and its transcript) given at the University of Colorado-Boulder. Based on our review of Mr. Tobey's assertions relating to competition for an NSS launch contract and whether the USAF Space and Missile Systems Center (SMC)[12] awarded contracts to ULA in accordance with DoD and Federal regulations, we developed four investigative objectives to guide our investigation of potential violations of Federal law or regulations. To meet these objectives, we interviewed both DoD and contractor personnel and reviewed documents and contract awards.

INVESTIGATIVE OBJECTIVES

1. *Did ULA improperly transfer five RD-180 rocket engines from NSS launch missions to commercial launch missions to influence congressional legislation?*

2. *Did the DoD provide an unfair advantage ("lean the field") to ULA over other contractors during the procurement process for NSS launch contracts and was there collusion between DoD and ULA officials pertaining to the Phase 1 Block Buy and Phase 1A GPS III contracts for NSS launch missions?*

3. *Did the USD(AT&L) and the Lockheed Martin CEO violate the Procurement Integrity Act[13] by engaging in a conversation concerning an acquisition strategy for a U.S.-made rocket engine to replace RD-180 rocket engines? Furthermore, did the USD(AT&L) and the Lockheed Martin CEO discuss a need to find a way to "silence" Senator McCain (keep him from attacking DoD) regarding rocket engines manufactured in the Russian Federation?*

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[11] The Consolidated Appropriations Act, 2016, specifically section 8048 made provisions to allow funds to be expended on the EELV program if the competitive procurements were open for award to all certified providers of EELV class systems. This is only if the contractor "offers the best value to the Government." Additionally, "notwithstanding any other provision of law," the contract may be awarded to the "launch service provider competing with any certified launch vehicle in its inventory regardless of the country of origin of the rocket engine that will be used on its launch vehicle, in order to ensure robust competition and continued assured access to space."

[12] The SMC's mission is to deliver resilient and affordable space capabilities and it has the authority to award contracts and agreements to support the EELV Program.

[13] The Procurement Integrity Act (Section 2101-2107, title 41, United States Code [41 U.S.C. §§ 2101-2107]) prohibits the release of source selection and contractor bid or proposal information. For further information on the Procurement Integrity Act, refer to 41 U.S.C. § 2102: Prohibitions on disclosing and obtaining procurement information, or visit http://uscode.house.gov/view.xhtml?req=(title:41 section:2102 edition:prelim).

4. *Did ULA violate its contractual obligations by choosing not to respond to a Request for Proposal (RFP) FA8811-16-C-0001, (hereafter referred to as the "Phase 1A GPS III contract")?*

METHODOLOGY

We conducted this investigation from March 2016 through October 2016.

We interviewed 40 personnel from the DoD (USD[AT&L] and USAF), ULA, and Lockheed Martin, who had knowledge of EELV-related contracts, ULA business practices, and NSS launch missions, to determine whether there was a basis for Mr. Tobey's assertions. Specifically, we interviewed USD(AT&L), the SMC Commander, the SMC Director of Launch Enterprise, and current and former EELV officials who were involved with contracting and overseeing space launch service acquisition including the Chiefs of EELV Systems and EELV Acquisition Divisions, and the former Director, Deputy Director, and Chief Engineer of Launch Systems. We also interviewed ULA's CEO and Chief Operating Officer (COO), Senior Manager of Contracts, former Vice President of Atlas and Delta programs, the former Vice President of Finance at ULA, and Lockheed Martin's CEO. We also interviewed Mr. Tobey two times.[14]

We reviewed four contracts and two Other Transaction Authority (OTA) agreements[15] relating to the EELV Program that the SMC awarded from October 2012 through April 2016. We reviewed the source selection process, contract management, and Phase 1A GPS III solicitation and award. Refer to Appendix A for detailed information concerning the EELV-related contracts.

INVESTIGATIVE OBJECTIVES DISCUSSION

Investigative Objective 1

Did ULA improperly transfer five RD-180 rocket engines from NSS launch missions to commercial launch missions to influence congressional legislation?

We interviewed multiple ULA employees who provided documentation that enabled us to identify the origin of the five RD-180 rocket engines that Mr. Tobey referred to during his presentation. These five rocket engines were manufactured in the Russian Federation and ULA purchased them before Congress, through the FY 2015 and FY 2016 NDAAs, effectively limited the number of RD-180 rocket engines that could be used in EELV space launches. During one of his interviews, Mr. Tobey told us that he had limited exposure to launch vehicles prior to his employment with ULA, but he believed that ULA referred to the five rocket engines as the "golden engines."[16] Our interviews of ULA personnel and a review of the relevant contract,

[14] This is a partial listing. For a more complete listing of those interviewed, refer to Appendix B.
[15] OTA agreements are legally binding instruments that are generally not subject to the Federal laws and regulations governing procurement contracts, such as the Federal Acquisition Regulation (FAR). For a more detailed explanation, refer to Appendix A.
[16] The phrase "golden engine" ("legal" or "exempt") refers to the five RD-180 rocket engines purchased by ULA before Congress limited the use or purchase of RD-180 rocket engines.

FA8811 13 C 0003 (hereafter referred to as the "Phase 1 Block Buy"), between DoD and ULA revealed that the DoD had no control over the disposition of these five rocket engines as they were, at all times, ULA corporate assets. We reviewed the Phase 1 Block Buy contract and determined that ULA was not required to use specific RD 180 rocket engines for NSS launch missions–in fact, the Phase 1 Block Buy contract called for "launch services" and not for the purchase of rocket engines. Additionally, ULA received its first delivery of the "golden engines" in November 2011, and the remaining four rocket engines were delivered in October 2013.

Interviews of ULA employees revealed that the ULA COO issued a memorandum on March 3, 2015, directing the removal of five RD-180 rocket engines from ULA's launch vehicle inventory. ULA executives told us the rocket engines were removed from inventory and put on reserve status for anticipated NSS missions. Approximately 4 months later, on July 14, 2015, ULA executives decided that keeping the five rocket engines in reserve status would create an inventory shortage affecting other launch service contracts.[17] On the same day, ULA's COO issued a memorandum directing the return of the five rocket engines to ULA's launch vehicle inventory.

During our interviews of senior ULA officials, they told us that ULA did not improperly transfer the five exempt RD-180 rocket engines from NSS missions to non-NSS missions because (1) when assigning rocket engines to missions, ULA did not distinguish between NSS launch and non-NSS launch missions; (2) ULA assigned RD-180 rocket engines to missions according to its current and forecasted NSS and commercial contracts; and (3) ULA uses a "first in, first out" asset management method for RD-180 rocket engines.[18]

Our interviews of DoD employees confirmed that: (1) ULA purchased RD-180 rocket engines from RD AMROSS; (2) ULA used RD-180 rocket engines to fulfill launch contracts for the Atlas launch vehicles; and (3) ULA assigned RD-180 rocket engines according to the ULA NSS and commercial mission schedule and RD-180 rocket engine shelf life.

On December 8, 2015, Senator McCain sent a letter to the Secretary of Defense to express his concerns over DoD's NSS launch program, the EELV program, and ULA's reasons for not submitting a proposal for the Phase 1A GPS III RFP. He also expressed his displeasure over ULA's assignment of the RD-180 rocket engines to non-NSS launches and called their "tactics" in doing so "unacceptable." In response to Senator McCain's December 8, 2015, letter to the Secretary of Defense regarding the EELV Program, the Deputy Secretary of Defense, responding on behalf of the Secretary of Defense, wrote "We understand that ULA seeks to minimize the inventory it carries and the time between engine testing and launch because long-term storage of

[17] ULA estimated that continued reservation of the five rocket engines would eventually cause a temporary factory shutdown costing millions of dollars in monthly production costs.
[18] According to the ULA COO, RD-180 rocket engines must be used within a certain number of years after production or be rebuilt. After a certain amount of time, seals within the rocket engine begin to deteriorate which could cause catastrophic failure of a mission.

RD-180 engines adds risk to space launch missions. Given this understanding, along with the engine production timelines and launch manifest, the Department has no reason to believe ULA's decision to assign the five engines to support its current manifest was early to need."

We reviewed congressional limitations on the number of RD-180 rocket engines designed or manufactured in the Russian Federation for the EELV Program. We determined that ULA's purchase and use of the five RD-180 rocket engines was not restricted by the provisions of Public Law 113-291, "Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015," as amended by Public Law 114-92, "National Defense Authorization Act for Fiscal Year 2016," or Public Law 114-113, "Consolidated Appropriations Act, 2016."

Our investigation determined that ULA returned its five rocket engines to its launch vehicle inventory to prevent a shortage. If ULA had not returned these rocket engines to its launch vehicle inventory, ULA would be unable to complete three missions. ULA forecasted that by May 2017, the inventory of RD-180 rocket engines would reach a low point of only two rocket engines. We reviewed ULA RD-180 rocket engine assignment data as of July 14, 2015, and determined that all RD-180 rocket engines were assigned to missions with projected launch dates.

We determined that ULA did not improperly transfer five RD-180 rocket engines from NSS missions to commercial launches because: (1) Mr. Tobey said that he misspoke during the presentation; he said that RD-180 rocket engine allocation strategy was not his area of expertise. He said he was "postulating" about a "political fight with generalities" drawing upon his knowledge from "working at ULA, reading articles and reading op-eds and stuff like that." (2) the rocket engines were the property of ULA; the DoD had no control over or property interests in the rocket engines; (3) DoD contracted for NSS launch services and not for the purchase of specific rocket engines for NSS launch missions; and (4) FY 2015 and FY 2016 NDAA restrictions of rocket engines manufactured in the Russian Federation did not apply to the five rocket engines.

Investigative Objective 2

> *Did the DoD provide an unfair advantage ("lean the field") to ULA over other contractors during the procurement process for NSS launch contracts and was there collusion between DoD and ULA officials pertaining to the Phase 1 Block Buy and Phase 1A GPS III contracts for NSS launches?*

During the March 15, 2016, presentation, Mr. Tobey stated that "the government [DoD] was not happy with us [ULA] not bidding that contract (Phase 1A GPS III launch) because they had felt that we'd been told back that [*sic*] they know that was to lean the – lean the field in our [ULA's] advantage."

During one of his interviews, Mr. Tobey said that he realized he misspoke when he said, "lean the field in our advantage." When asked about his comments regarding lean the field, Mr. Tobey stated that he meant to say, "level the playing field." Senior ULA officials told us that DoD did not "lean the field in our [ULA's] advantage" and that there was nothing the DoD did that favored ULA in procurement. The ULA Customer Representative at the SMC said during his interview, "If the government had bent over backwards to lean it to our favor, I suspect that as a company, we would have decided to bid on it and do–put a proposal in and get the mission."

DoD officials told us that there was no agreement between the DoD and ULA about ULA having an advantage during the procurement process. They also told us that DoD acquisition personnel fostered an environment in which the DoD could get the best value contract for space launches. When asked to explain his understanding of Mr. Tobey's reference to "lean the field in our advantage" the SMC Chief, EELV Acquisitions Division, said, "I have no understanding of it. They [the DoD] were trying to achieve the best value for the taxpayers, that's what we tried to do and we always try to do." The USD(AT&L) told us his strategy was to create a competitive environment for NSS launch contracts. He said that he had no idea what Mr. Tobey was talking about regarding "lean the field in our advantage" and he had no evidence that anybody was leaning any of the competitions.

We reviewed the acquisition strategy, justification for sole-sourcing the Phase 1 Block Buy contract, and decisions related to the contract type and structure. We also interviewed contracting officers and acquisition personnel assigned to the contract. Our review determined that SMC completed sufficient analysis to determine that NSS launch contracts were awarded to ULA under the Phase 1 Block Buy contract on a sole-source basis because no other providers were reasonably expected to be available to meet the DoD's needs and timeline. SMC took steps such as issuing various research and development agreements and creating a new entrant certification process so that new entrants could compete for future launch services.

We determined that SMC completed an acquisition strategy for the Phase 1 Block Buy in accordance with FAR Subpart 7.1, "Acquisition Plans."[19] The USAF Service Acquisition Executive approved the acquisition strategy in November 2011 for the Phase 1 Block Buy. The acquisition strategy covered the EELV Program for launches required to be placed under contract from FY 2013 through FY 2017. The strategy also included an additional 2 years of support during FY 2018 and FY 2019 for launches procured in FY 2016 and FY 2017.[20] In February 2013, the USD(AT&L) approved an amended acquisition strategy that did not change

[19] According to the FAR, the agency head or designee is responsible for preparing written acquisition plans. As the value of the contract increases, the level of approval authority and requirement documentation increases. Personnel should include the acquisition background, the objective with a statement of need, and the plan of action encompassing competition and acquisition considerations.

[20] In November 2012, USD(AT&L) approved the Secretary of the Air Force's request to continue with the Phase 1 Block Buy. The USD(AT&L) approved the procurement of 36 cores for launch services from ULA and up to 14 more cores if a competitive environment did not develop before the Government needed to place the requirements under the contract. A core is a metal structure that one or more engines are attached to.

the overarching strategy. Based on our review of the amended acquisition strategy and the referenced technical documents that describe the requirements of the program, we did not identify any concerns about DoD requirements that would hinder competition and new entrants to the EELV Program.

We determined that SMC awarded EELV contracts to ULA by properly completing the source selection procedures. SMC prepared an acquisition strategy for the Phase 1 Block Buy contract and supported the use of other than full and open competition for the three EELV contracts and for two EELV contract modifications.

We determined that SMC contracting personnel adequately supported the use of other than full and open competition by using four Justification and Approvals (J&A) for Other than Full and Open Competition, including a class J&A[21] for three EELV contracts and three J&As for two EELV modifications.[22] In the four J&As, SMC contracting personnel provided adequate rationale as to why only one contractor could provide the required product or service and why only that product or service could meet the Government's requirements.[23] SMC contracting personnel also obtained approval from the appropriate official for the four J&As before contract award as required by FAR Subpart 6.3, "Other Than Full and Open Competition." In addition, the senior procurement executive of the agency appropriately approved the four J&As valued more than $93 million. Finally, the approving official signed the J&As before contract award for all four J&As as required by FAR 6.303, "Justifications."

In response to Senator McCain's December 8, 2015, letter to the Secretary of Defense regarding the EELV Program, the Deputy Secretary of Defense, writing on behalf of the Secretary of Defense, wrote, "We do not believe that our space launch capability can realistically transition completely off of the RD-180 prior to the 2021-2022 timeframe. Therefore, the Department has continued to seek to preserve our assured access to space even if doing so requires the use of RD-180 rocket engines, subject to any restrictions placed in law. Furthermore, if it is deemed necessary in order to maintain two viable sources of launch services, sole-source allocation of some launches will be one of the options examined. We would need to be confident an allocation was required, and it would be the minimum number of launches required to keep a second launch service provider viable during the transition period."

We determined that DoD officials did not provide an unfair advantage ("lean the field") to ULA over other contractors during the procurement process for NSS launch contracts and did not collude in the planning and award of the Phase 1 Block Buy contract or the Phase 1A GPS III contract. We based our determinations on: (1) Mr. Tobey's admission that he misspoke during the presentation and that he did not intend to imply there was any irregularity in the space launch

[21] SMC contracting personnel prepared a class J&A for the ELC, EELV Launch Services (ELS), and Phase 1 Block Buy contracts.
[22] SMC contracting personnel prepared separate J&As for three specific EELV launches on the Phase 1 Block Buy contract, with one launch ordered through modification P00061 and two launches ordered through modification P00090.
[23] A contracting officer must not begin negotiations for a sole-source contract or award any other contract without providing full and open competition unless the contracting officer justifies the use of such action in writing, certifies the accuracy and completeness of the justification, and obtains approval of the justification.

contracting process; (2) no evidence of collusion was revealed through multiple interviews of DoD and ULA personnel, and reviews of acquisition planning documentation, contracts, and internal DoD and ULA correspondence; (3) DoD officials at all levels implemented an acquisition strategy designed to introduce competition for the launch services under the EELV Program; and (4) ULA's decision not to submit a proposal for the contract is inconsistent with the assertion that there was collusion between the DoD and ULA. Furthermore, had there been collusion, it would have been likely that ULA, confident of the outcome, would have submitted a proposal.

Investigative Objective 3

> *Did the USD(AT&L) and the Lockheed Martin CEO violate the Procurement Integrity Act by engaging in a conversation concerning an acquisition strategy for a U.S.-made rocket engine to replace RD-180 rocket engines? Furthermore, did the USD(AT&L) and the Lockheed Martin CEO discuss a need to find a way to "silence" Senator McCain (keep him from attacking DoD) regarding rocket engines manufactured in the Russian Federation?*

In his March 15, 2016 presentation, Mr. Tobey posed a hypothetical scenario:

> keep in mind when . . . the CEO of Lockheed Martin . . . when she wants to talk to . . . somebody high up in the DoD . . . The first thing that comes out of any of the DoD leadership's mouth when she walks in the door is, 'What are you doing with that damn RD-180 engine? I'm sick of McCain attacking us.' . . . And so they're trying to figure out, you know, 'How do we,—How do we silence McCain?'

During Mr. Tobey's interview, he said that although he made the statements regarding a conversation between the USD(AT&L) and the Lockheed Martin CEO:

> I was never -- my discussions about the board member interactions, my discussions about Marillyn Hewson as the CEO of Lockheed Martin…my discussions about senior leaders in the Air Force and then also the senators…are purely speculation on my part. I've never had conversations at that level. That was not part of my responsibility at ULA and with my brief experience at ULA, it wasn't my place to have that kind of knowledge.

Mr. Tobey stated that when he mentioned "silencing" Senator McCain, he actually meant "satisfy" Senator McCain. Mr. Tobey explained:

> [s]ilence is a very unfortunate choice of words. What I mean to say there is satisfy. Satisfy is a much better term and satisfy McCain means moving off of the RD-180 engine and reliance on Russian rocket engines more rapidly than other people's positions.

Mr. Tobey stated that he misspoke many times during the presentation. He said:

> Again, my comments were made in a classroom environment to a -- what I believed was a private set of students and professors, where I felt very comfortable and got into a[n] excessively casual tone of discussion with them. Those comments were then recorded, put out on the Internet, transcripted in, put into transcripts, quoted in sound bites that make them very damaging to ULA. And for that, I'm very sorry.

We interviewed the ULA COO, and he said that he never heard anyone talk about "silencing" Senator McCain and had no recollection of discussing meetings between the USD(AT&L) and the Lockheed Martin CEO. We also interviewed the ULA CEO and he said that he had no personal knowledge of meetings between the USD(AT&L) and the Lockheed Martin CEO where "silencing" Senator McCain was discussed and thought it unlikely that Mr. Tobey would have such knowledge. The ULA CEO also told us that the first time he "saw" the phrase "silence McCain" was when he read it in Mr. Tobey's transcript.

We interviewed the Lockheed Martin CEO and she denied the assertion that she had conspired to "silence" Senator McCain. She said that she had never heard any DoD leader discuss "silencing" Senator McCain. She said she never had a conversation with ULA personnel, including Mr. Tobey, referencing "silencing" Senator McCain. She also denied discussing the acquisition strategy of the RD-180 rocket engine or "silencing" Senator McCain with the USD(AT&L). In addition, she said that she had regular meetings with the USD(AT&L) and with DoD personnel and that Mr. Tobey never attended any of these meetings.

We interviewed the USD(AT&L), who said that he and the Lockheed Martin CEO met periodically, as he did with the other top defense contractors. However, he said that he never had a conversation with the Lockheed Martin CEO or DoD personnel during which anyone discussed "silencing" Senator McCain. He said he did not recall having any conversations with the Lockheed Martin CEO regarding the acquisition strategy of a U.S.-made rocket engine to replace the RD-180 rocket engine. He said that he thought Mr. Tobey was "making stuff up" regarding his (USD[AT&L]) conversations with the Lockheed Martin CEO and the idea that anybody was trying to "silence" Senator McCain. According to the USD(AT&L), these conversations never happened.

We interviewed DoD acquisitions officials and they told us that they had no knowledge of conversations between Lockheed Martin officials and DoD personnel about "silencing" Senator McCain. None of the individuals interviewed had any knowledge of a conversation between the Lockheed Martin CEO and the USD(AT&L) regarding the acquisition strategy for replacing the RD-180 rocket engine. DoD officials said the DoD was "serious about moving off the RD-180" and was working on a replacement rocket engine for the RD-180 rocket engine.

We reviewed the calendar entries of both the Lockheed Martin CEO and the USD(AT&L) and confirmed that Mr. Tobey was not listed among the attendees of any meetings with the Lockheed Martin CEO and the USD(AT&L).

We found no evidence to support a violation of the Procurement Integrity Act regarding the alleged conversation because: (1) Mr. Tobey stated during one of his interviews, "I absolutely have no knowledge of a conversation like that happening, that it's a fictitious made up scenario."; (2) multiple interviews of DoD and ULA personnel and a review of internal DoD and ULA correspondence revealed no indication of a conversation between the USD(AT&L) and the Lockheed Martin CEO concerning an acquisition strategy for a U.S.-made rocket engine to replace RD-180 rocket engines; (3) we reviewed e-mails and calendar entries of the Lockheed Martin CEO and the USD(AT&L) and confirmed that Mr. Tobey was not listed among the attendees of any meetings between the Lockheed Martin CEO and the USD(AT&L); and (4) the USD(AT&L) and the Lockheed Martin CEO both denied having a discussion about the acquisition strategy of the RD-180 rocket engine and both denied ever discussing "silencing" Senator McCain.

Investigative Objective 4

> *Did ULA violate its contractual obligations by choosing not to respond to an RFP for the Phase 1A GPS III contract?*

In his March 15, 2016, presentation, Mr. Tobey said, " the government [DoD] was not happy with us [ULA] not bidding that contract [Phase 1A GPS III launch] because they had felt that we'd been told back that [*sic*] they know that was to lean the – lean the field in our [ULA's] advantage."

During an interview of Mr. Tobey, he said that he was postulating that the DoD was "not happy" based on his perception of what he observed during an Executive Review Board meeting on December 11, 2015. Mr. Tobey said:

> so what I'm saying there, is that I was sensing, so I'm postulating what I think the Air Force is -- how they're feeling… and how I got this feeling, what was in my head at the time that I was presenting that goes back to…an executive leadership meeting on December 11, 2016 – 2015, where it was an impressive collection of -- it had ULA leader -- senior leadership at the front table. It had Air Force senior leadership, Dr. Claire Leon and General Greaves…and I was for the first time meeting these people that I'd just heard about…the discussion was about was it a fair competition and you could just sense with General Greaves' body language and Dr. Claire Leon's body language that they had -- I got the sense that they had felt they had put together a fair RFP.

Mr. Tobey told us that, "they (ULA) wanted to have an environment where fair competition was available and it was a level playing field," rather than "lean the field" in ULA's advantage.

SMC posted the draft RFP for the Phase 1A GPS III launch to the Federal Business Opportunities website on May 14, 2015, and anticipated that both Space Exploration Technologies Corporation (SpaceX) and ULA would submit proposals on the Phase 1A GPS III launch RFP.[24] On September 30, 2015, SMC posted the final RFP to include horizontal integration[25] as an acceptable means to perform the Phase 1A GPS III launch.

We reviewed the Phase 1A GPS III mission and competition and determined that the Phase 1A GPS III mission RFP was not part of ULA's existing Phase 1 Block Buy contract to provide launches for the EELV Program. Cost Accounting Standard 9904.402-61(c) states:

> [c]osts incurred in preparing, submitting, and supporting proposals pursuant to a specific requirement of an existing contract are considered to have been incurred in different circumstances from the circumstances under which costs are incurred in preparing proposals, which do not result from such specific requirement. The circumstances are different because the costs of preparing proposals specifically required by the provisions of an existing contract relate only to that contract while other proposal costs relate to all work of the contractor.

Therefore, ULA was able to incur costs for proposals relating to the Phase 1 Block Buy contract because they were already under contract. However, the Government could not obligate ULA to incur proposal costs for the Phase 1A GPS III launch because that launch was not a specific requirement of an existing contract. Additionally, DoD officials were in the process of drafting the advance agreement to clarify that ULA could not incur costs on the Phase 1 Block Buy contract for performance on competitively awarded contracts such as the Phase 1A GPS III contract.

We interviewed senior ULA officials who told us that there was no contractual obligation for ULA to submit a proposal for any competitive launch services contract solicited by the DoD. The former ULA Vice-President of Atlas and Delta Programs said that he believed that after the USAF received the April 2015 letter,[26] the USAF initiated a waiver request for ULA to use the RD-180 rocket engines. The letter detailed ULA's need for a waiver in order to use the RD-180 rocket engine for future competitive NSS missions and that without a waiver, ULA would be unable to compete for NSS missions. Ultimately, after conferring with his General Counsel, the USD(AT&L) decided that ULA did not meet the criteria for a waiver. Additionally, the exception to section 1608 of the FY 2015 NDAA would not apply to the rocket engines that ULA intended to use for Phase 1A GPS III contract.

[24] SMC received two proposals for the Phase 1A GPS III launch RFP. ULA did not submit a proposal and did not notify the DoD of its intent not to submit an offer for the Phase 1A GPS III launch RFP until noon on November 16, 2015, which was the day that proposals were due.
[25] Horizontal integration is the process of a launch vehicle being assembled, tested, and prepared for launch while on its side (that is horizontally). When integration is complete, the vehicle is moved to the pad, raised, and launched.
[26] "Request for Secretary of Defense Waiver to FY 2015 NDAA, Section 1608," April 28, 2015.

On November 16, 2015, ULA transmitted a letter informing the responsible USAF contracting officer that ULA would not submit a proposal for the Phase 1A GPS III contract. In its letter, ULA expressed its opinion that the use of a lowest price technically acceptable (LPTA)[27] structure for the RFP would not allow the USAF to distinguish between offerors on the basis of system reliability, schedule certainty, technical capability, and past performance – critical factors ULA believed to be its considerable strengths. Additionally, the letter stated that the RFP required ULA to reimburse the launch capability costs (also referred to as "EELV Launch Capability [ELC] costs") to the USAF in a manner inconsistent with ULA's contractual commitments.[28] ULA also stated in the letter that it would be required under the RFP to make a certification that it was unable to make regarding its launch capability costs. According to ULA, this certification would create the risk of a violation of the Cost Accounting Standards, and force ULA to submit a non-compliant proposal. Finally, ULA stated that it would not have an Atlas launch vehicle available because of the restrictions on the use of RD-180 rocket engines in the FY 2015 NDAA.

In response to Senator McCain's December 8, 2015, letter to the Secretary of Defense regarding the EELV Program, the Deputy Secretary of Defense, writing on behalf of the Secretary of Defense, wrote:

> The GPS III-2 launch service RFP included a certification requirement that, except for a portion of the allowable costs associated with the EELV ELC line item under ULA's current sole-source space launch service contract, "none of the costs of the effort required in the performance of [the GPS III-2] launch service contract will be charged to any other Government contract." This was to provide assurance that no potential offeror, including ULA, had an unfair competitive pricing advantage. We disagree with any statements made by ULA that it did not have the accounting systems in place needed to make this certification. The DoD and Air Force met with ULA several times, both before and after the solicitation was issued, regarding the use of the certification provision and ULA's accounting treatment of ELC costs.

We interviewed DoD officials who told us that ULA had no contractual obligation to submit a proposal on any NSS launch contract. We also reviewed the awarded contracts and there was no contractual obligation requiring ULA to submit a proposal for future contracts. ULA was able to assign RD-180 rocket engines based on the needs of the company without violating any contractual obligations because ULA owned the rocket engines. Once ULA assigned the five "golden engines," it left ULA without any engines that were not subject to the FY 2015 NDAA. Therefore, ULA would require a waiver to acquire additional RD-180 rocket engines in order to submit a proposal in response to the Phase 1A GPS III RFP. DoD officials told us they believed the predominant reason that ULA chose not to submit a proposal was a

[27] According to the March 4, 2015 memorandum from USD(AT&L), "Appropriate Use of Lowest Priced Technically Acceptable Source Selection Process and Associated Contract Type," LPTA is the appropriate source selection process to apply when there are well defined requirements, the risk of unsuccessful contract performance is minimal, price is a significant factor in the source selection, and there is no value, need, or willingness to pay more for the supplies and services.

[28] The ELC portion of the Phase 1 Block Buy contract includes engineering support for launch vehicle production and launch services, actual launch site operations and maintenance, and spacecraft mission analysis and integration activities. If these costs were not excluded from ULA's future contract proposals, ULA would have an unfair advantage over other competitors.

ULA business decision. In addition, in response to Senator McCain's December 8, 2015, letter to the Secretary of Defense regarding the EELV Program, the Deputy Secretary of Defense, writing on behalf of the Secretary of Defense, wrote "ULA's decision not to submit a proposal was based on its internal business and management deliberations, and the Department has no way to compel ULA to bid."

DoD officials responded to ULA's letters (April, August, September, and November 2015) by modifying the draft RFP and drafting the advance agreement,[29] though the agreement was not finalized until December 2015, which was after the RFP due date of November 16, 2015. After conferring with his General Counsel, the USD(AT&L) decided that ULA did not meet the criteria for a waiver. Additionally, the exception to section 1608 of the FY 2015 NDAA did not apply for the rocket engines that ULA intended to use for Phase 1A GPS III contract.

DoD could not direct ULA to incur proposal preparation costs unless ULA was under contract for those requirements. USD(AT&L) memorandum "Direct and Indirect Charging of Contractor Proposal Preparation and Negotiation Support Costs," November 10, 2011, states,

> [i]f there is a specific requirement for submission of a proposal in a contract, the proposal and negotiation costs are direct costs of that contract and cannot be transferred to another contract. Follow-on work does not automatically qualify to be charged directly to a contract merely because there is an assumption that the contractor will submit a proposal as part of a continuing program. For the costs to be charged directly to a contract there must be to be [*sic*] a specific requirement in an existing contract to submit that particular proposal, not just an implied requirement.

Therefore, ULA did not have an obligation to submit a proposal for the Phase 1A GPS III solicitation, and the DoD had no way to obligate ULA to participate in the separate competition.

We determined that ULA did not violate any applicable contractual obligations by choosing not to submit a proposal regarding Phase 1A GPS III competition. We based our determination on multiple interviews of DoD and ULA personnel and reviews of acquisition planning documentation, contracts, and internal DoD and ULA correspondence. SMC contracting officials did not include a requirement in any of the existing EELV contracts for ULA to submit a proposal on subsequent competitive launches. For detailed information concerning the EELV-related contracts we reviewed, refer to Appendix A.

[29] (~~FOUO~~) The advance agreement established [redacted] The advance agreement was signed on December 22, 2015.

CONCLUSION

During the DoD OIG team's interviews of Mr. Tobey, he recanted the assertions he made during his March 15, 2016 presentation. Mr. Tobey said there was no factual basis for statements he made during his presentation and characterized his assertions as "postulation."

We also conducted interviews of personnel having knowledge of EELV-related contracts, ULA business practices, and NSS launch missions. We also reviewed four contracts and two OTA agreements related to the EELV Program (including the solicitation, source selection process, contract management, and award) that the USAF awarded from October 2012 through April 2016. We found no evidence that ULA improperly transferred five RD-180 rocket engines from NSS launch missions to commercial launch missions to influence congressional legislation. We also found no evidence that the DoD gave an unfair advantage to ULA over the contractors in competition for NSS launch contracts. We also found no evidence of conversations between the USD(AT&L) and the Lockheed Martin CEO concerning an acquisition strategy for replacing RD-180 rocket engines. Furthermore, we found no evidence that the USD(AT&L) and the Lockheed Martin CEO had a conversation about a need to find a way to "silence" Senator McCain (keep him from attacking the DoD) about acquiring rocket engines manufactured in the Russian Federation. Finally, we determined that the DoD awarded NSS contracts to ULA in accordance with DoD and Federal regulations.

Appendix A. Contracts and Other Transaction Authority Agreements

Contracts and Other Transaction Authority Agreements Reviewed

We reviewed four contracts and two Other Transaction Authority (OTA) agreements related to the EELV Program. We completed our review using the generally accepted government auditing standards for evidence and documentation. Specifically, we reviewed applicable contracts and OTA agreements that SMC awarded from October 2012 through April 2016. We reviewed the source selection process, contract management, Phase 1A GPS III solicitation and award, and OTA agreements. The Table shows the contracts and OTA agreements reviewed with their values.

Table. Contracts and OTA Agreements Reviewed

	Contract Number	Description	Contract Award Date	Contract Value
1	FA8811-13-C-0001	EELV Launch Capability	10/1/2012	$1,167,800,000[1]
2	FA8811-13-C-0002	EELV Launch Services	11/15/2012	1,784,000,000[1]
3	FA8811-13-C-0003	Phase 1 Block Buy	6/26/2013	1,087,000,000[1]
4	FA8811-16-C-0001	GPS III Contract	4/27/2016	82,700,000
5	FA8811-16-9-0001	SpaceX OTA agreement for Research and Development for Rocket Propulsion System Prototypes	1/13/2016	100,980,760[2]
6	FA8811-16-9-0004	ULA OTA agreement for Research and Development for Rocket Propulsion System Prototypes	2/29/2016	87,457,480[3]

1 Not-to-exceed value
2 Government share is $33,700,000
3 Government share is $46,600,000

Contracting and Agreements for the EELV Program

The Air Force SMC develops, acquires, fields, and sustains military space systems. SMC's mission is to deliver resilient and affordable space capabilities. With this mission, SMC personnel awarded contracts and agreements to support the EELV program.

ELC and ELS Contracts

In 2012, SMC personnel used a dual-contract approach for the EELV program and awarded contract FA8811-13-C-0001 for the ELC contract and contract FA8811-13-C-0002 for EELV Launch Services (ELS) (ELS contract). The SMC contracting officer awarded the ELC contract to ULA on October 1, 2012. In this contract, SMC contracting personnel included engineering support for launch vehicle production and launch services, the actual launch site operations and maintenance, and spacecraft mission analysis and integration activities. The SMC contracting officer awarded the ELC contract enabling the Government to maintain the capability to launch satellites even when the Government did not need launches in a given year to preserve the technical skills and infrastructure necessary for assured access to space. SMC personnel awarded the ELS contract to ULA on November 15, 2012. In the ELS contract, SMC contracting personnel included labor and materials associated with the production of the EELV launch vehicles. The SMC contracting officer awarded both contracts using procedures other than full and open competition because ULA was the only certified EELV provider at that time.

Phase 1 Block Buy Contract

SMC officials realized that the practice of procuring launch services for one or a few missions at a time did not provide stability for the supply base; therefore, the SMC contracting officer awarded contract FA8811-13-C-0003 (Phase 1 Block Buy). The SMC contracting officer awarded the Phase 1 Block Buy contract to ULA on June 26, 2013. The SMC contracting officer awarded the Phase 1 Block Buy contract using procedures other than full and open competition because ULA was the only certified EELV provider at that time. In the Phase 1 Block Buy, the SMC contracting officer negotiated for 36 EELV cores across 5 years from ULA and up to an additional 14 cores from ULA if competition was not possible at the time of need. The SMC contracting officer awarded modifications to the contract to order EELV launches and to extend the period of performance for the ELC portion of the contract.

Phase 1A GPS III Contract

In 2016, the SMC contracting officer awarded the first competitive contract for the EELV program. The SMC contracting officer awarded contract FA8811-16-C-0001 (Phase 1A GPS III contract) to Space Exploration Technologies Corporation (SpaceX) on April 27, 2016, for $82.7 million. SpaceX will provide the Government with services such as launch vehicle production and mission integration for the Phase 1A GPS III mission.

Other Transaction Authority Agreements

The SMC agreements officer awarded four OTA agreements for research and development for the EELV Rocket Propulsion System Prototypes. Agreements' officers must be warranted contracting officers and can only bind the Government to the extent of their delegated authority as contracting officers, according to "Other Transactions (OT) Guide for Prototype Projects" (OT Guide), August 2002. Other transactions are acquisition instruments that are generally not

subject to the Federal laws and regulations governing procurement contracts and may be formed as a cost-sharing agreement. The SMC agreements officer awarded one of the OTA agreements to SpaceX (FA8811-16-9-0001) and another to ULA (FA8811-16-9-0004). The SMC agreements officer awarded the SpaceX OTA agreement with a combined value of $101 million, including the Government's maximum share of $33.7 million. The SMC agreement officer awarded the ULA OTA agreement for a combined total value of $87.5 million, including the Government's maximum share of $46.6 million.

Source Selection Process Properly Completed

SMC justified its decision to award EELV contracts to ULA by properly completing source selection procedures. Specifically, SMC prepared an acquisition strategy for the Phase 1 Block Buy contract and supported the use of other than full and open competition for the three EELV contracts and for two EELV contract modifications.

Acquisition Strategy Met Federal Acquisition Regulation Requirements for Acquisition Planning

SMC completed an acquisition strategy for the Phase 1 Block Buy in accordance with FAR Subpart 7.1, "Acquisition Plans." According to FAR 7.101, "Agency Head Responsibilities," the agency head or designee has the responsibility to prepare written acquisition plans. The written acquisition plans must include the objectives and the decision milestones; however, the specific content of the plans will vary according to the complexity of the acquisition. As the value of the contract increases, the level of approval authority and required documentation increases. Personnel should include the acquisition background, the objective with a statement of need, and the plan of action encompassing competition and acquisition considerations. See FAR 7.105 for the required contents of written Acquisition Plans.

The USAF Service Acquisition Executive approved the acquisition strategy in November 2011 for the Phase 1 Block Buy. The intent of the Phase 1 Block Buy was to sustain the program to ensure access to space and obtain the pricing benefits from buying in quantity. The acquisition strategy covered the EELV Program for launches required to be placed under contract from FY 2013 through FY 2017 and included an additional 2 years of support during FY 2018 and FY 2019 for launches procured in FY 2016 and FY 2017.

In July 2012, the USD(AT&L) rescinded the delegation of authority for the program and established the USD(AT&L) as the milestone decision authority for the program. In November 2012, the USD(AT&L) approved the Secretary of the Air Force's request to continue with the Phase 1 Block Buy. The USD(AT&L) approved the procurement of 36 cores from ULA and as many as 14 more cores if a competitive environment did not develop before the Government needed to place the requirements under contract. In February 2013, the USD(AT&L) approved an amended acquisition strategy for the EELV Program. During our review of the amended acquisition strategy and the referenced technical documents that describe

the requirements of the program, we did not identify any concerns about the Government requirements that would unnecessarily hinder competition and new entrants to the EELV Program.

Sole-Source Justifications Were Adequately Supported

SMC contracting personnel adequately supported the use of other than full and open competition within four Justification and Approvals (J&As) for other than full and open competition, including a class J&A[30] for three EELV contracts and three J&As for two EELV modifications.[31] SMC contracting personnel documented the required elements of FAR 6.303-2, "Content," in all the J&As. SMC contracting personnel obtained approval from the proper official for each of the J&As before contract award. FAR 6.302, "Circumstances Permitting Other Than Full and Open Competition," lists the seven exceptions to full and open competition. A contracting officer must not begin negotiations for a sole-source contract or award any other contract without providing full and open competition unless the contracting officer justifies the use of such action in writing, certifies the accuracy and completeness of the justification, and obtains approval of the justification.

SMC Contracting Personnel Complied With J&A Content Requirements

SMC personnel documented all the required J&A content requirements in the four J&As. FAR 6.303-2 requires each J&A to contain sufficient facts and rationale to justify the use of the specific authority cited, and the FAR specifies the minimum information that must be included. For example, the FAR requires information such as a description of the supplies or services required to meet the agency's needs, the estimated value, and the statutory authority (law) that permits other than full and open competition. In the four J&As, SMC personnel included each of the elements required by the FAR.

SMC Contracting Personnel Appropriately Applied the Sole-Source Authority Cited in the J&As

SMC contracting personnel applied the appropriate authority permitting other than full and open competition in the four J&As. SMC contracting personnel awarded three contracts and two modifications citing the authority of FAR 6.302-1, "Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements." In the four J&As, SMC contracting personnel provided adequate rationale as to why only one contractor could provide the required product or service and why only that product or service could meet the Government's requirements.

For example, in the class J&A for the ELC, ELS, and Phase 1 Block Buy contracts, SMC contracting personnel explained that ULA was the sole EELV launch service provider.

[30] SMC contracting personnel prepared a class J&A for the ELC, ELS, and Phase 1 Block Buy contracts.
[31] SMC contracting personnel prepared separate J&As for three specific EELV launches on the Phase 1 Block Buy contract, with one launch ordered through modification P00061 and two launches ordered through modification P00090.

FAR 6.302-l(a)(iii)(B) states that full and open competition need not be pursued when it is likely that award to any other source would result in unacceptable delays in fulfilling the agency's requirements, in particular, for the continuation of highly specialized services. In the J&A, SMC contracting personnel stated that,

> EELV launch services require 98 percent reliability due to the high dollar value and national importance of the payloads aboard the rockets. This effort requires mechanical, electromagnetic, environmental, and other specialized engineering disciplines necessary for controlled explosions and remote controlled operations in dynamic space environments to insert spacecraft into orbit as well as considerable capital investments to provide these services. ULA is currently the only launch provider that can meet the requirements for EELV-class National Security Space missions and has provided these services to the Government since 2006.

Therefore, based on our review SMC contracting personnel adequately justified the sole-source awards of the contracts in accordance with FAR 6.302-1.

SMC Contracting Personnel Appropriately Obtained Approval From Proper Officials Before Awarding Sole-Source Contracts

SMC contracting personnel obtained approval from the appropriate official on the four J&As before contract award as required by FAR Subpart 6.3, "Other Than Full and Open Competition." FAR 6.304, "Approval of the Justification," defines the proper approval authority at various thresholds for the estimated dollar value of the contract including options. The FAR authorizes the senior procurement executive of the agency to provide the final approval for proposed contract actions over $93 million. The senior procurement executive of the agency appropriately approved the four J&As valued at more than $93 million. The approving official signed the J&As before contract award for all four J&As as required by FAR 6.303, "Justifications."

Market Research Was Appropriately Documented

SMC contracting personnel appropriately documented the market research conducted for the noncompetitive contracts in accordance with FAR Part 10, "Market Research." The FAR states, among other things, that agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition. FAR 10.002, "Procedures," states that the extent of market research will vary, depending on such factors as urgency, estimated dollar value, complexity, and experience. SMC contracting personnel performed market research techniques identified in the FAR for three contract awards and two modification awards that had adequate support documented in the contract file.

Contract Management

SMC personnel properly managed the ULA EELV contracts by adequately performing contract management procedures. Specifically, SMC contracting personnel adequately documented their determination of price reasonableness for three Undefinitized Contract Actions (UCA) and two OTA agreements. In addition, the contracting officers met most requirements related to awarding three UCAs and two cost-reimbursement contracts.

Price Reasonableness Adequately Documented

SMC contracting personnel adequately documented their determination of price reasonableness for three UCAs and two OTA agreements based on FAR Subpart 15.4, "Contract Pricing," and the "Other Transactions (OT) Guide for Prototype Projects" (OT Guide), August 2002, respectively. In some instances, contracting personnel went beyond the required minimum requirements in the negotiation memorandums and conducted price analysis to evaluate the reasonableness of the USAF objective.

We reviewed the contract files for three UCAs and determined that the files contained adequate documentation, such as final and preliminary price negotiation memorandums. FAR 15.403-3, "Requiring Data Other Than Certified Cost or Pricing Data," requires that the contracting officer obtain information that is adequate for evaluating price reasonableness. Further, FAR 15.406-3, "Documenting the negotiation," states that the contracting officer, among other things, must document fair and reasonable price in the contract file. USAF personnel completed a cost analysis of the contractor proposals and evaluated the cost elements against Defense Contract Management Agency (DCMA), Defense Contract Audit Agency, and technical evaluation recommendations to determine that negotiated amounts were fair and reasonable.

SMC contracting personnel properly documented the price negotiation memorandums and met the requirement to submit certified cost or pricing data, adequacy of cost or pricing data, and cost or price analysis, all in accordance with FAR 15.403-4, "Requiring Certified Cost or Pricing Data." In addition, one of the contractors had a waiver from obtaining cost or pricing data from subcontractors and suppliers, as allowed by FAR 15.403-1(b)(4) and (c)(4).

(FOUO) The SMC agreements officer properly documented the price reasonableness of the two OTA agreements in the final other transaction agreement negotiation memorandums in accordance with the OT Guide. During the award process, SMC personnel conducted an initial assessment of the proposed costs, [redacted][32] [redacted] SMC personnel analyzed the pricing documents included in the proposals and considered the proposed costs as reasonable.

[32] The person who makes a proposal or offer to enter into a contract.

Undefinitized Contract Actions Generally Awarded Properly

SMC contracting personnel obtained proper authorization before awarding two of the three UCAs, definitized one of the three UCAs within the 180-day requirement, and properly obligated funds for three UCAs. However, contracting personnel did not discuss profit with respect to the use of UCA or costs incurred before definitization for any of the three UCAs. UCAs are contract actions with contract terms, specifications, or price not agreed upon before performance must begin. Contracting officers should only use UCAs when negotiation of a definitive contract action is not possible in sufficient time to meet the Government's needs. In addition, the Government's interest must require a binding commitment be given so that contract performance can begin immediately. According to Section 2326(a), title 10, United States Code (10 U.S.C. § 2326(a) [2011]), the request to the head of the agency for authorization of the contractual action is required to include a description of the anticipated effect on the military's requirements if delays are incurred. Also, 10 U.S.C. § 2326 (2011) establishes limitations on the time frame to definitize terms, allowable profit, and the obligation of funds. In addition to the requirements in 10 U.S.C. § 2326 (2011), contracting officers must comply with the Defense Federal Acquisition Regulation Supplement (DFARS) 217.74, "Undefinitized Contract Actions."

To determine whether SMC contracting personnel appropriately awarded UCAs, we reviewed the compliance in the following areas.

- Authorization to Award a UCA. We determined whether contracting personnel awarded UCAs after obtaining proper authorization. In addition, we reviewed the requests to verify that the requests included a description of the anticipated effect on the military's requirements if a UCA is not issued and included the DFARS Procedures, Guidance, and Information (PGI) 217.74, "Undefinitized Contract Actions," requirements.

- Contract Definitization. We determined whether contracting personnel completed negotiations to define the contractual terms, specifications, and price of the UCAs and modified the contract with the agreed upon terms within the 180-day time limits.

- Allowable Profit. We evaluated whether contracting personnel's determination of contractor profit reflected the work performed during the undefinitized period.

- Obligation Limitations. We evaluated whether contracting personnel obligated funding within allowable limits and in an amount consistent with the contractor's requirements for the undefinitized period.

Proper Authorization Obtained Before Award

Contracting officers obtained proper authorization through a request for authorization to issue a UCA before awarding two of the three UCAs. Contracting personnel included information in the J&A supporting the need for the other contract to continue the required services. While a UCA was necessary based on the information contained in the contract file, contracting personnel should have created a separate authorization specific to that contract.

The DFARS PGI 217.7404-1 requires that a request for approval package for a UCA include:

- why a UCA is required;
- detailed explanation for the need to begin performance before definitization;
- adverse impact on agency requirements that would result from delays in beginning performance;
- risk of using a UCA and the means by which the Government will mitigate such risk;
- specific contractual instrument to be used, and justification;
- limitations on the obligation of funds; and
- definitization schedule of agreed-upon events that support timely definitization.

For the requests for authorization reviewed, SMC personnel did not address the risk of using a UCA and the means by which the Government will mitigate such a risk. The requests included the remaining elements.

Lack of Compliance With Contract Definitization Requirements

SMC contracting personnel definitized one of three contracts within the 180-day requirement. Contracting personnel received qualifying proposals before contract award for both of the contracts with late definitization. For the ELC contract, contracting personnel awarded the contract on October 1, 2012, and definitized the contract on July 22, 2013, for a total of 294 days between award and definitization. The price negotiation memorandum included a time line of the events occurring in support of negotiations, which included conducting extensive fact-finding between ULA personnel and USAF personnel from August 2012 through May 22, 2013. In addition, ULA personnel provided multiple proposals and updates, including a final update on February 1, 2013.

For the ELS contract, contracting personnel awarded the contract on November 15, 2012, and definitized the contract on January 10, 2014, resulting in 421 days between award and definitization. DoD and ULA personnel conducted extensive fact-finding between

December 2011 and October 18, 2013. Contracting personnel stated that the complexity of the other two contracts led to the delay in definitization. In addition, DoD personnel were in the process of changing the acquisition strategy used during previous contracts for obtaining the services since competition would be available in the future, leading to changes in the proposals to meet the change in requirements.

Lack of Compliance With Allowable Profit Requirements

SMC contracting personnel did not meet the requirements related to allowable profit for UCAs. According to 10 U.S.C. § 2326(e) (2011), the head of the agency is required to ensure that the profit allowed reflects the possible reduced cost risk for the contractor with respect to costs incurred during performance of the contract before negotiations. DFARS 217.7404-6(c) requires the risk assessment to be documented in the contract file. We reviewed the preliminary and final price negotiation memorandums for the prime contractor; however, the SMC contracting personnel did not discuss profit with respect to the use of a UCA or costs incurred before definitization. We are not making a recommendation since the lack of discussion did not affect the need to have a UCA in place to receive the necessary services.

Obligation Limitations Were Generally Met

Contracting officers generally met the obligation requirements for the three UCAs. According to 10 U.S.C. § 2326 (2011), the contracting officer is allowed to obligate up to 75 percent of the negotiated ceiling price after receipt of the qualifying proposal. DFARS 217.7404-4, "Limitations on Obligations," requires the contracting officer to consider contractor's requirements during the undefinitized period when determining the appropriate amount to obligate. For the three UCAs, the contracting officers only exceeded the 75 percent obligation limitation once, and they corrected the over obligation in the next modification 2 days later. The contracting officers obligated funds in increments over the undefinitized period for all three UCAs, which we considered to comply with the DFARS requirement. We are not making a recommendation because the over obligation was quickly fixed by SMC personnel and was not a systemic problem.

Proper Approval Obtained for Cost-Reimbursement Contracts

SMC contracting personnel obtained proper approval for the use of a cost-reimbursement contract, properly justified the use of cost-reimbursement contract, and properly documented plans to transition cost-reimbursable items to firm-fixed-price items when possible in accordance with the FAR.[33] In addition, SMC contracting personnel determined the contractor's accounting system was adequate for a cost-reimbursement contract for the two cost-reimbursement

[33] Section 864 of the FY 2009 NDAA, Public Law 110-417, required the FAR be revised to address the use of cost-reimbursement contracts, to include requirements to document decisions and approvals that are necessary before issuing cost-reimbursement contracts. Federal Acquisition Circular 2005-50, March 16, 2011, implemented the required revisions on an interim basis. The interim rule was effective immediately and was not subject to public comment before issuance. The final rule was published in the Federal Register on March 2, 2012, without significant changes, see FAC 2005-56.

contracts. However, contracting personnel did not designate a contracting officer's representative for one of the contracts and designated a contracting officer's representative for the second a year after the award of the contract. SMC contracting personnel awarded two of the four contracts reviewed as cost-reimbursement type contracts, the ELC and Phase 1 Block Buy contracts.

To determine whether SMC contracting personnel complied with the FAR, we reviewed compliance with these areas:

- approval for the cost-reimbursement contract was at least one level above the contracting officer;
- use of a cost-reimbursement contract was justified;
- how the requirements under the contract could transition to firm-fixed-price in the future;
- Government resources were available to monitor the cost-reimbursement contract; and
- contractors had an adequate accounting system in place during the contract.

Contracting personnel were required to document the justification, approval, and transition strategy in the acquisition planning documentation. However, the contracting personnel were not required to document whether adequate resources or an accounting system was available specifically within the acquisition planning documentation.

Proper Approval Obtained Before Contract Award

SMC contracting personnel obtained proper approval for use of a cost-reimbursement type contract before contract award. In the acquisition strategy for the EELV Program, USAF personnel outlined the justification for issuing a cost-reimbursement contract for ELC and the USAF Service Acquisition Executive approved the acquisition strategy. In the Determination & Findings for the cost type determination for the Phase 1 Block Buy contract, SMC contracting personnel outlined the justification for issuing a cost-reimbursement contract, and the Director of Contracting, SMC, approved the Determination & Findings. Both positions are at least one level above the contracting officer.

Cost-Reimbursement Type Properly Justified

SMC contracting personnel adequately justified a cost-reimbursement type contract for the two contracts reviewed. The acquisition strategy for the EELV Program discussed plans to include multiple contract structures for the contract line item numbers to provide "the Government far more flexibility to adjust to manifest changes." The acquisition strategy discussed plans to use cost-plus-fixed-fee contract line item numbers for efforts that could not be fully defined up front. For the Phase 1 Block Buy, contracting personnel stated that in the Determination and Findings

for contract type that a cost-reimbursement type contract was chosen because "uncertainties exist as to the required level of effort. Though the work can be defined in general terms, the nature and duration of specific tasks cannot be determined in advance with any degree of certainty."

Properly Documented Transition Strategy

(FOUO) Contracting personnel included documentation in both contract files on plans to transition cost-reimbursable items to firm-fixed-price when possible. For the ELC contract, SMC personnel discussed in the EELV Program acquisition strategy [redacted] For the Phase 1 Block Buy, SMC personnel discussed in the Determination and Findings for contract consolidation and the J&A plans to use firm-fixed-price contract line item numbers when appropriate, such as for the launch vehicle production services including production and transportation to launch sites.

Adequate Resources Were Not in Place

Contracting personnel did not designate a contracting officer's representative as required for cost-reimbursement contracts and the contracting officers did not retain and execute the duties. A cost-reimbursement contract may only be used when adequate resources are available to award and manage the contract. SMC personnel had a Memorandum of Agreement between Launch Systems Enterprise, Los Angeles Air Force Base, and DCMA Lockheed Martin-Denver, for coverage of the EELV Program. This memorandum delegates contract oversight and quality assurance roles over multiple contracts including the ELC Contract and Phase 1 Block Buy contract to DCMA. However, SMC contracting personnel did not designate a contracting officer's representative for the ELC contract. SMC contracting personnel did designate a contracting officer's representative for the Phase 1 Block Buy on September 8, 2014; however, this designation was more than a year after the award of the contract on June 26, 2013. We are not making a recommendation because SMC personnel have a current designated contracting officer's representative, and DCMA is assisting in providing oversight.

Adequacy of Accounting System Determined Before Contract Award

SMC contracting personnel determined the adequacy of the contractor's accounting system before contract award. DCMA personnel made a final determination to disapprove the contractor's accounting system on June 27, 2012. The Deputy Chief, Contracting Divisions, USAF Space Command, approved a class deviation to allow the award of cost-reimbursement contracts in support of the EELV Program. The Divisional Administrative Contracting Officer anticipated the accounting system would be approved by early October 2012. SMC contracting personnel awarded the ELC contract on October 1, 2012. For the Phase 1 Block Buy, the

Director of Contracting noted in the Determination and Findings for contract type that DCMA personnel approved the contractor's accounting system on October 18, 2012. We consider that both contracts comply with the requirements.

SMC Personnel Properly Solicited and Awarded the Phase 1A GPS III Contract

In 2016, SMC personnel properly solicited and awarded its first competitive contract for the EELV Program since the creation of ULA. SMC contracting officer awarded the Phase 1A GPS III launch to SpaceX. Until this award, SMC contracting officers awarded EELV launches using noncompetitive contracting procedures to ULA. SMC personnel anticipated both SpaceX and ULA would submit proposals on the Phase 1A GPS III launch.

Adequate Solicitation of Phase 1A GPS III Launch Contract

SMC personnel posted the RFP for the Phase 1A GPS III launch to the Federal Business Opportunities website on May 14, 2015. On September 30, 2015, SMC personnel amended the RFP to include horizontal integration as an acceptable means to perform the Phase 1A GPS III launch.

SMC personnel received two proposals for the Phase 1A GPS III launch. ULA officials did not submit a proposal. The SMC Procuring Contracting Officer (PCO) stated that ULA did not notify her of its' intent not to submit an offer for the Phase 1A GPS III Launch until noon on November 16, 2015, the day proposals were due. ULA officials did not publicly announce that it would not submit an offer until the evening of November 16, 2015, after the proposal deadline passed.

(~~FOUO~~) SMC personnel requested updates to both proposals [redacted] SMC personnel evaluated the offers against three evaluation criteria. In order to be eligible to win the award, the offer had to receive acceptable on all evaluation criteria. If an offeror received an unacceptable on one evaluation criteria, the offer was disqualified from receiving the award. The three evaluation criteria were performance, schedule, and price, as described below.

1. Performance. Subfactors for performance included orbital accuracy, mass to orbit, and launch operations concept of operations.
2. Schedule. Subfactors for schedule included integrated schedule and work closure plans.
3. Price. The offeror's price was evaluated for reasonableness and unbalanced pricing.

In addition to the three evaluation criteria, SMC personnel considered the offeror's responsibility. The offeror's responsibility also included a requirement for the SMC to certify the offeror's launch vehicle prior to award. Offers that the SMC did not previously certify for EELV launches were not qualified to receive the award.

Award of Phase 1A GPS III Launch to SpaceX

On April 27, 2016, SMC contracting personnel awarded contract FA8811-16-C-0001 to SpaceX for $82.7 million. SpaceX will provide the Government with services such as launch vehicle production and mission integration for the Phase 1A GPS III mission.

Other Transaction Authority Agreements

The SMC agreements officer met requirements that allowed the use of OTA, used competitive procedures to award the OTA agreements, and properly included within the agreements file documentation to support the award. OTA agreements are acquisition instruments that are generally not subject to the Federal laws and regulations governing procurement contracts, such as the FAR. Section 2371, title 10, U.S.C. provides the DoD authority to enter into transactions other than contracts, grants, or cooperative agreements. Further, in accordance with 10 U.S.C. § 2371(b), this authority may only be used when one of the following conditions is met:

- There is at least one nontraditional defense contractor participating in the prototype project to a significant extent.
- All significant participants in the transaction other than the Federal Government are small businesses or nontraditional defense contractors.
- At least one third of the total cost of the prototype project is to be paid out of funds provided by the parties to the transaction other than the Federal Government.
- The senior procurement executive for the agency determines in writing that exceptional circumstances justify the use of a transaction that provides for innovative business arrangements or structures that would not be feasible or appropriate under a procurement contract or would provide an opportunity to expand the defense supply base in a manner that would not be practical or feasible under a contract.

The USD(AT&L) created an OT Guide to provide a framework that should be considered and applied, as appropriate, when using this authority.

The SMC agreements officer awarded four OTA agreements for research and development for the EELV Rocket Propulsion System Prototypes, including one to SpaceX and another to ULA. SMC personnel awarded the OTA agreements to meet the requirements in the FY 2015 and FY 2016 NDAAs. The FY 2015 NDAA section 1604, "Rocket Propulsion System Development Program," requires DoD to develop a next generation rocket propulsion system to enable the transition from the use of non-allied space launch rocket engines to a domestic alternative for NSS launch missions. In addition, Section 1608 of the FY 2015 NDAA limits the use of the RD-180 rocket engine. Section 1606 of the FY 2016 NDAA directs the use of a streamlined

acquisition approach for the development of the next generation rocket propulsion system and clarifies the difference between a rocket propulsion system and launch vehicle while prohibiting funding of launch vehicle development. Section 1607 of the FY 2016 NDAA allows the use of four additional RD-180 rocket engines beyond those permitted by the FY 2015 NDAA.

DoD personnel met requirements allowing the use of OTA. During acquisition planning, DoD personnel discussed within the "Determination & Findings Authorizing Use of Other Transactions Authority (OTA) for Prototypes: Evolved Expendable Launch Vehicle (EELV) Program Phase 2" and the Acquisition Strategy Document how the acquisition plans will comply with various laws including 10 U.S.C. § 2371b (2014), the FY 2015 and FY 2016 NDAAs, and applicable space laws.[34] By requiring at least one third of the cost to be paid by other than the Government, DoD personnel met the requirements in 10 U.S.C. § 2371b when awarding the OTA agreements. In addition, DoD personnel considered the use of an OTA agreement appropriate because the DoD will be investing in the development of a rocket propulsion system prototype, a commercial product that will also be used for defense services.

DoD personnel used competitive procedures to award the OTA agreements. The evaluation process to determine the OTA agreements to award was a multi-part process including the evaluation of initial proposals; a request for extended proposals from offerors selected after evaluation of the initial proposals; evaluation of extended proposals; initial portfolio selection; negotiations; initial awards; final portfolio determination; and subsequent awards. DoD personnel selected a portfolio of agreements from the proposals determined as the best rated and proposals that would most effectively support the Government's goals.

The OT Guide provided a framework with expectations related to what should be included within the agreements files and within certain documents required to support the award of an OTA agreement. The SMC agreements officer included in the agreements' files support for the use of an OTA agreement and documented the reasonableness of the negotiated price and key terms and conditions. DoD personnel included in the acquisition strategy the required elements, such as a discussion of the consistency with applicable authorities such as 10 U.S.C. § 2371b, the FY 2015 and FY 2016 NDAAs, and applicable space laws; rationale for selecting OTA; technical and management descriptions of the program; risk assessment; competition; nature of the agreement; terms and conditions; and follow-on activities. In addition, the agreements addressed the required elements, including definitions, allocation of rights, delivery requirements, special circumstances, and the basis and procedures for payment.

[34] Applicable space laws include, but are not limited to, 10 U.S.C. § 2273, "Policy Regarding Assured Access to Space: National Security Payloads," and 51 U.S.C. § 50131, "The Commercial Space Launch Act."

Summary

SMC justified their decision to award EELV contracts to ULA by properly completing source selection procedures. Specifically, SMC prepared an acquisition strategy for the Phase 1 Block Buy contract and supported the use of other than full and open competition for the three EELV contracts and for two EELV contract modifications. In addition, SMC properly managed the EELV contracts to ULA by adequately performing contract management procedures. Specifically, SMC contracting personnel adequately documented their determination of price reasonableness for three UCAs and two OTA agreements, and met most requirements related to awarding the three UCAs, two cost-reimbursement contracts, and two OTA agreements. SMC personnel properly solicited and awarded the Phase 1A GPS III competitive contract to SpaceX.

Appendix B. Statutory Authority, Regulations, and Interviews

STATUTORY AUTHORITY

The DoD Inspector General (IG) has statutory authority in accordance with the Inspector General Act of 1978, as amended, for policy, oversight, and performance evaluation with respect to all DoD activities relating to criminal investigation programs. This authority is implemented in DoD Directive 5106.01, "Inspector General of the Department of Defense (IG DoD)," April 20, 2012, Incorporating Change 1, August 19, 2014.

GOVERNING STATUTES AND ACQUISITION REGULATIONS

- Public Law 113-291, "NDAA for Fiscal Year 2015"
- Public Law 114-92, "NDAA for Fiscal Year 2016"
- Public Law 114-113, "Consolidated Appropriations Act, 2016"
- FAR, Part 3, "Improper Business Practices and Personal Conflicts of Interest"
- FAR, Part 5, "Publicizing Contract Actions"
- FAR, Part 6, "Competition Requirements"
- FAR, Part 7, "Acquisition Planning"
- FAR, Part 9, "Contractor Qualifications"
- FAR, Part 10, "Market Research"
- FAR, Part 11, "Describing Agency Needs"
- FAR, Part 15, "Contracting by Negotiation"
- FAR, Part 30, "Cost Accounting Standards Administration"
- FAR, Part 42, "Contract Administration and Audit Services"
- Section 2273, title 10, United States Code (10 U.S.C. § 2273 [2010]) "Policy regarding assured access to space; national security payloads"
- 10 U.S.C. § 2304 (2014), "Contracts: competition requirements"
- 10 U.S.C. § 2326 (2011), "Undefinitized contractual actions: restrictions"
- 10 U.S.C. § 2371 (2014), "Research projects: transactions other than contracts and grants"
- 10 U.S.C. § 2371b (2016), "Authority of Department of Defense to carry out certain prototype projects"
- 18 U.S.C. § 371 (2014), "Conspiracy to commit offense or to defraud the United States"
- 18 U.S.C. § 1031 (2014), "Major fraud against the United States"
- 41 U.S.C. § 2101 through § 2107 (2011), "Procurement Integrity Act"

INTERVIEWS

Government personnel:

- USD(AT&L)
- Principal Deputy Assistant Secretary of Defense for Acquisition, USD(AT&L)
- Chief, EELV Systems Division, SMC, Los Angeles Air Force Base, El Segundo, California
- PCO, Phase 1 Block Buy, SMC
- Chief, EELV Acquisitions Division, SMC
- Former Director, Launch and Range Systems Directorate, SMC
- Deputy Director, Launch Systems Enterprise, SMC
- Chief Engineer, Launch Systems Enterprise, SMC
- Two Former Program Executive Officers for Space Launch, SMC
- Service Acquisition Executive, SMC
- Director, Launch Enterprise, SMC
- Executive Director, SMC
- Chief, Launch Systems Enterprise Contracting, SMC
- Deputy Chief, Launch Systems Enterprise Contracting, SMC
- Director, Engineering, SMC
- Director, Space Programs, SMC
- Former Assistant USD(AT&L) and Senior Acquisition Executive, SMC
- Former Commander, SMC
- Former Vice Commander, SMC
- Chief, EELV Systems Division, SMC
- Chief, EELV Acquisitions Division, SMC
- Former Assistant Secretary of Defense for Acquisition (current Acting Assistant Secretary of the Army for [AT&L])
- PCO, Phase 1 Block Buy and Phase 1A GPS III, SMC
- Director, Launch Systems Enterprise, SMC
- Former Director of Defense Pricing, SMC
- Contracting Officer for Support Contracts, SMC
- PCO, ELC contract, SMC
- Former Director, Contracting, SMC
- PCO, Phase II, SMC

ULA personnel:

- CEO
- COO
- Atlas Chief Engineer
- Senior Manager of Contracts

- Program Management Leader, and Customer Representative Strategic Customer Relations
- Former Vice President of Atlas and Delta Programs
- Former Vice-President of Finance
- Executive Director of Finance
- Former CEO

Lockheed Martin personnel:

- CEO
- Vice President and General Manager of Special Programs

Acronyms and Abbreviations

AT&L	Acquisition, Technology, and Logistics
CEO	Chief Executive Officer
COO	Chief Operating Officer
DCMA	Defense Contract Management Agency
DFARS	Defense Federal Acquisition Regulation Supplement
EELV	Evolved Expendable Launch Vehicle
ELC	Evolved Expendable Launch Vehicle Launch Capability
ELS	Evolved Expendable Launch Vehicle Launch Services
FAR	Federal Acquisition Regulation
GPS	Global Positioning System
J&A	Justification & Approval
LPTA	Lowest Price Technically Acceptable
NDAA	National Defense Authorization Act
NSS	National Security Space
OIG	Office of the Inspector General
OT	Other Transactions
OTA	Other Transaction Authority
PCO	Procuring Contracting Officer
PGI	Procedures, Guidance, and Information
RFP	Request for Proposal
SMC	Space and Missile Systems Center
SpaceX	Space Exploration Technologies Corporation
UCA	Undefinitized Contract Action
ULA	United Launch Alliance
USAF	United States Air Force
USD	Under Secretary of Defense

Whistleblower Protection
U.S. Department of Defense

The Whistleblower Protection Enhancement Act of 2012 requires the Inspector General to designate a Whistleblower Protection Ombudsman to educate agency employees about prohibitions on retaliation, and rights and remedies against retaliation for protected disclosures. The designated ombudsman is the DoD Hotline Director. For more information on your rights and remedies against retaliation, visit www.dodig.mil/programs/whistleblower.

For more information about DoD OIG reports or activities, please contact us:

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