

Project On Government Oversight

Preying on the Taxpayer: The F-22A Raptor

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INTRODUCTION

In June 2006, the Senate passed an amendment to the National Defense Authorization Act for Fiscal Year 2007 which authorized the government to purchase 20 F-22A¹ Raptor fighter jets each year for 2008, 2009, and 2010 using a multiyear procurement (MYP) strategy.

Lockheed Martin (Lockheed), the lead contractor on the F-22A program, lobbied aggressively to secure the MYP deal. If Lockheed is able to secure MYP status, it would essentially lock the government into buying 60 more of the troubled F-22A's and minimize the possibility that the program could suffer further funding cuts. An MYP would also result in the American taxpayers paying Lockheed \$1 billion more than they would under the normal annual procurement process. (Appendix A)

In the lead up to the Senate vote and related budget debates in the House, the Congressional Research Service (CRS), Government Accountability Office (GAO), Congressional Budget Office (CBO), and Institute for Defense Analyses (IDA) were tasked with evaluating whether or not the F-22A program met the six legal requirements for an MYP strategy. In order for MYP status to be granted, a program must meet all six requirements. The CRS, GAO, and CBO all provide evidence that the F-22A program is not yet ripe for this type of financing scheme and that putting the F-22A into an MYP at this stage would be premature. Documents obtained by the Project On Government Oversight (POGO) show that even the Air Force raised significant questions as late as February 2006 about whether the F-22A would meet all the MYP requirements. (Appendix B, pages 17-18)

Only one opinion, that of IDA, differed from the rest. IDA concluded that the government would save about 2.5% – totaling around \$225 million to \$235 million – by using the strategy. (Appendix C) In the hours leading up to the debate on the Pentagon budget bill, Lockheed's lobbyists and its Congressional supporters promoted the surprising finding of IDA, a federally funded non-profit institute that conducts research for the federal government. Lockheed sent an email to Senate offices claiming the IDA had found that the F-22A would meet all the requirements for an MYP. (Appendix D) This claim appears to be based on a misreading of the IDA report.

What was not known at the time of the MYP vote was that IDA President Admiral Dennis C. Blair, USN (Ret.), is on the Board of Directors and a significant financial beneficiary of an F-22A subcontractor. As of July 5, 2006, Blair owned 1,787 shares of stock and 30,000 stock options in EDO Corporation, which manufactures essential suspension and release equipment for the F-22A. As a result, Blair himself stood to financially profit from a favorable MYP decision for the F-22A. (Appendix E)

¹ The Air Force changed the designation of the F/A-22 to F-22A in 2005.

THE TROUBLED F-22A

In recent years, POGO has questioned the ability of Lockheed Martin to meet its goals for the troubled F-22 fighter jet program. Since its conception in 1986, the Air Force's F-22A Raptor fighter jet has been the focus of continued debate. The aircraft was originally intended to replace the aging F-15 fighter and create superiority in air-to-air combat operations. The F-22A, originally called the Advance Tactical Fighter (ATF), was designed to combat air threats posed by the Soviet Union. As the program took shape, the Kremlin fell and the air superiority threat from the Soviet Union vanished. With a diminishing air-to-air combat mission, the Air Force has assigned the F-22A new roles of air-to-ground combat and intelligence gathering. As a result, the aircraft continues to undergo modernization, and will for several more years.

But even if the F-22A were already adequately designed for today's missions, the program has faced multiple set-backs, and continues to do so. Problems range from technical flaws (despite 20 years of research and development) to a cost that is higher per aircraft than any other in history, totaling over \$65.4 billion dollars to date.² The Air Force's original intent had been to acquire 750 aircraft for their inventory. Today, that number is 183.³ This drop in numbers is due primarily to the technical difficulties and repeated cost overruns in the program. The cost of the aircraft has tripled while, in response, the number of aircraft requested has decreased.

In addition to an exorbitant cost-per-aircraft, the Pentagon recently completed a Follow-on Independent Test and Evaluation (FOT&E) on the F-22A's existing systems that found 75 unresolved deficiencies. (Appendix B) New problems that have cropped up include faulty cockpit actuators – which trapped a pilot in the jet, and he had to be rescued from his cockpit with chainsaws; uncommanded nose landing gear retractions, which recently caused an aircraft to fall on its main weapons bay doors – literally falling on its face; and concerns about the heat treatment of the booms, which may cause structural cracking. These problems have been reported to Congress by CRS, GAO, and even the Air Force. Problems have also been identified by the Pentagon's Director of Operational Test and Evaluation (DOT&E).

According to CRS, the F-22A has historically experienced problems with the Avionics, Airframe, Engine, Cockpit Canopy, and Maintenance and Support Requirements. These problems do not incorporate the cost of Class A mishaps to the aircraft. (A Class A mishap is one that results in over \$1 million dollars in damage.) The F-22A has had three Class A mishaps over the past two years. (Appendix G)

² "F-22A Raptor," Congressional Research Service, RL31673, Page 4, May 24, 2006, <http://www.fas.org/sgp/crs/weapons/RL31673.pdf> (Downloaded July 24, 2006); "Defense Acquisitions: Actions Needed to Get Better Results on Weapons Systems Investment," GAO Written Testimony before House Armed Services Committee, GAO-06-585T, April 5, 2006, <http://www.gao.gov/new.items/d06585t.pdf> (Downloaded July 24, 2006).

³ "F-22A Raptor."

THE MISLEADING LOCKHEED EMAIL

With this troubled history as a backdrop, on June 15, 2006, Lockheed Martin Vice President of Legislative Affairs Jack Overstreet sent an email to senior Senate staff members titled “Chambliss F-22 Multiyear Amendment.” (Appendix D) In a shockingly transparent sign of how the nation’s military industrial complex functions, the email contained a copy of Senator Saxby Chambliss’ (R-GA) amendment, even though Senator Chambliss had not yet introduced it. The email requested, “PLEASE VOTE ‘YES’ ON THE PROPOSED CHAMBLISS AMENDMENT ON F-22 MULTIYEAR PROCUREMENT.”

The email further states that IDA found that the F-22A meets all six of the entrance criteria for MYP. The email contained multiple attachments, including the text of the amendment in normal legislative format, talking points, and fast fact sheets to which Senators could refer. The email, of course, did not include the evidence from CRS, GAO, CBO, DCAA, or even the Air Force, challenging the program’s compliance with the legal requirements for MYP status.

Lockheed’s claim in its email that IDA concluded the F-22A meets all MYP requirements appears to have been based on a misinterpretation of the IDA report. IDA limited its analysis to only one requirement – that there be cost savings. However, IDA attached two unattributed documents at the end of its report that assert the F-22A meets all six requirements. Because the author of these documents is not clearly identified, the wrong impression appears to have been reached that they are IDA conclusions. In fact, however, these are Pentagon exhibits for the FY2007 President’s Budget and not independent analyses by IDA.

Shortly after Lockheed’s email was sent, Senator Chambliss introduced the amendment to the National Defense Authorization Act for Fiscal Year 2007 to grant the F-22A multiyear procurement status. (Appendix F) Based on the timing of the email and its content, it appears that Lockheed Martin was involved in the process and likely drafted the amendment themselves.

The amendment states that the F-22A program is in accordance with Section 2306(b) of Title 10 of the United States Code (USC), which sets forth the six legal requirements that must be met to qualify for MYP status.

MULTIYEAR PROCUREMENT REQUIREMENTS

A multiyear procurement is, according to the Defense Acquisition University, a “method of competitively purchasing up to 5 years’ requirements in one contract, which is funded annually as appropriations permit.”⁴

⁴ “Glossary of Defense Acquisition Acronyms & Terms,” Defense Acquisition University, 12th Edition, July 2005, http://www.dau.mil/pubs/glossary/12th_Glossary_2005.pdf (Downloaded July 24, 2006).

But there are significant risks to using an MYP for procurement:

A multiyear contract in comparison to a series of successive annual contracts offers cost savings and a stable procurement rate. However, this form of contracting also bears significant risks. MYP reduces congressional budgetary flexibility, both for the instant program and across other programs within the defense portfolio. Though multiyear programs are funded on an annual basis, they tend to require greater budgetary authority in the earlier years of the procurement. The Government also bears the risk of program cancellation, which can be quite high in the earlier years of the program. In certain cases, the requirement for design stability can also be a barrier to technology insertion. (Appendix C, page 9)

To mitigate these risks, the government established Title 10 U.S.C. §2306 (b),⁵ which sets forth six legal criteria that must be met for MYP status to be granted. The criteria are:

- (1) That the use of such a contract will result in substantial savings of the total anticipated costs of carrying out the program through annual contracts.
- (2) That the minimum need for the property to be purchased is expected to remain substantially unchanged during the contemplated contract period in terms of production rate, procurement rate, and total quantities.
- (3) That there is a reasonable expectation that throughout the contemplated contract period the head of the agency will request funding for the contract at the level required to avoid contract cancellation.
- (4) That there is a stable design for the property to be acquired and that the technical risks associated with such property are not excessive.
- (5) That the estimates of both the cost of the contract and the anticipated cost avoidance through the use of a multiyear contract are realistic.
- (6) In the case of a purchase by the Department of Defense, that the use of such a contract will promote the national security of the United States.

EVIDENCE THAT THE F-22A PROGRAM IS NOT RIPE FOR MYP STATUS

With the exception of IDA, the analysts tasked with evaluating the F-22A program for MYP status found, to varying degrees, that the program does not meet all of the requirements for MYP. This includes the Air Force itself.

⁵ 10 U.S.C. § 2306 (b), [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse_usc&docid=Cite:+10USC2306\(b\)](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse_usc&docid=Cite:+10USC2306(b)) (Downloaded July 24, 2006).

Requirement 1: That the use of such a contract will result in substantial savings of the total anticipated costs of carrying out the program through annual contracts.

GAO –

“We do not believe this condition has been met. The Air Force has not yet completed an estimate of multiyear procurement savings but has stated that it expects a maximum savings under its “best case” scenario of about 5 to 6 percent. It is expected to provide a final estimate to the Congress in May 2006. According to the CBO, substantial savings was defined in the past as at least 10 percent; however, the current law does not define substantial. **We would point out, however, that the unit cost to procure remaining F-22As has increased 8 percent when comparing the fiscal year 2007 budget (using multiyear procurement) to the fiscal year 2006 budget (without multiyear procurement).** The unit procurement costs to complete the F-22A program in fiscal year 2006 was \$166 million per aircraft for 56 aircraft. The unit procurement cost to complete the program in fiscal year 2007 using multiyear procurement increased to \$179 million for 60 aircraft. The multiyear plan proposes buying 20 aircraft each in fiscal years 2008 through 2010 whereas the fiscal year 2006 budget terminated procurement in 2008. **The inefficiencies connected with extending the program by 2 years will add over \$1 billion to the budget.”** [Emphasis added] (Appendix A)

CRS –

“There may be reasons for some to question the feasibility of achieving IDA’s estimated \$225 million MYP savings. For example,

There has been consistent and noteworthy disagreement between the Air Force and the Office of the Secretary of Defense (OSD) on F-22 cost estimating. Congress requested an independent cost estimate, which DoD hired IDA to execute.

IDA’s estimate of F-22 costs is different from OSD’s and the Air Force’s estimates.

In the December 31, 2004, Selected Acquisition Report (SAR) DoD reported that a two-year MYP (for production lots seven and eight) the Air Force anticipated pursuing would have saved \$458.9 million over annual procurement. This level of estimated savings for a two-year MYP is approximately twice the figure IDA estimates the Air Force may save through a three-year MYP. Such disparity in estimates may suggest to some observers poor assumptions, tools, or methodologies for MYP cost savings estimates.

The basis of some Air Force cost estimates is unclear. For example, the Air Force plans to acquire two additional F-22 aircraft with the anticipated \$225 million in MYP savings. According to DoD’s latest estimate, the F-22’s Average Procurement Unit Cost is \$185.4 million in FY2005 dollars. By this figure, two F-22’s would cost \$370.8 million.

GAO has consistently argued that the F-22 program should have conducted more thorough testing before entering production. For example, the GAO has argued that “The F-22 entered production without ensuring production processes were in control.” If true, this less-than-mature production process could be responsible for the F-22's current technical problems, which add to program cost, and may reduce projected MYP savings.” (Appendix G)

CBO –

“Deferring recognition of the full cost of the assets being purchased would understate the nature of the government’s obligations, potentially distorting budgetary choices by making the program appear less expensive than it is, and would constrain budgetary flexibility in subsequent years.”⁶

IDA –

“For the MYP BCA [Business Case Analysis] IDA *estimated* the savings to be 2.2 percent of procurement costs. We present MYP savings in the context of total procurement cost.” [Emphasis in original] (Appendix C)

Requirement 2: That the minimum need for the property to be purchased is expected to remain substantially unchanged during the contemplated contract period in terms of production rate, procurement rate, and total quantities.

GAO –

“We do not believe this condition has been met. The planned quantities of F-22As have changed substantially over time starting with a requirement for 750 at program start to the current planned quantity of 183. The Air Force still includes the F-22A as one of its highest priority systems and continues to state a need for 381 aircraft, leaving a gap of 198 aircraft. **However, in the last two years the quantities have changed twice.** In December 2004, OSD determined that procurement of F-22As had to be terminated in fiscal year 2008 in order to save \$10.5 billion. OSD stated this was all the F-22s that could be afforded. Then in December 2005, OSD changed the quantities again increasing them to 183 aircraft, adding over \$1 billion to the F-22A budget. This tension between OSD and the Air Force will apparently continue into future budgets and quantities and could change again given the potential for further demands on limited government resources through the 2010 timeframe (War on Terror, future natural disasters, aging population, and many others). This disconnect between quantities needed and quantities that can be afforded is a major contributor to the broken F-22A business case and we believe it needs to be resolved before additional funds are authorized for procurement or

⁶ Statement of Donald B. Marron, “The Air Force's Proposal for Procuring F-22 Fighters,” Congressional Budget Office, March 28 2006, <http://www.cbo.gov/ftpdocs/71xx/doc7104/03-28-F-22.pdf> (Downloaded July 24, 2006).

modernization. Until the disconnect between needs and affordability can be solved and quantities are firmly established, it is difficult to determine what role the F-22A should have. Other alternatives (JUCAS, F-15s, JSFs) might provide sufficient ground attack capabilities and could result in further reductions in F-22A if its primary role is air superiority.” [Emphasis added] (Appendix A)

CRS –

“... the F-22A program has experienced noteworthy turbulence between the FY05 and FY07 budget requests. Total program budget, annual budget requests, total inventory, annual procurement rate, and program duration have all changed. ... Considering the changes to the F-22A program that have occurred, and changes which are being proposed, some may question the Air Force’s ability to comply with some provisions of 10 USC 2306(b)(a), including provision (2)” (Appendix G)

Requirement 3: That there is a reasonable expectation that throughout the contemplated contract period the head of the agency will request funding for the contract at the level required to avoid contract cancellation.

GAO –

“We do not believe this condition has been met.” The GAO further stated, “The Air Force has indicated that its multiyear budget is currently under funded by \$674 million.” [Emphasis added] (Appendix A)

CRS-

“Considering the changes to the F-22A program that have occurred, and changes which are being proposed, **some may question the Air Force’s ability to comply with some provisions of 10 USC 2306(b)(a), including provision (2) ... and (3).**” [Emphasis added] (Appendix G)

CBO –

“... the funding provided each year would not be sufficient to complete the aircraft ordered that year, and the Air Force would have to seek additional appropriations in the future to obtain functional aircraft. ... The Air Force would commit to the purchase of 20 aircraft per year for three years, with the right to cancel the remainder of the order at the end of each year. **But it is not requesting appropriations sufficient to cover the potential cancellation liability. Under that proposal for multiyear procurement, the Air Force would have to seek additional appropriations in the future even if a decision was made to cancel the contract.**”⁷ [Emphasis added]

⁷ Ibid.

Air Force –

POGO recently acquired a February 2006 Air Force presentation showing unresolved issues concerning the stability of funding for the F-22A program, the third requirement for MYP status. The Air Force rated the program's ability to meet the “Stable Funding” requirement “Yellow” as it will need to acquire waivers from the Office of the Secretary of Defense (OSD) because the MYP does not include full funding as required or funding for contract cancellation. (Appendix B)

Requirement 4: That there is a stable design for the property to be acquired and that the technical risks associated with such property are not excessive.

GAO –

“While the design for the baseline F-22A aircraft, designed primarily for an air superiority role, is stable, the design for the ground attack capability to be added has not been demonstrated and thus cannot be considered ‘stable.’” (Appendix A)

CRS –

CRS has highlighted many problems over the years with the F-22A. Most recently, it has discussed difficulties with the Structures Retrofit Program (SRP), forward boom heat treatment, the canopy actuator, Air Recharge System (ARS), and the nose landing gear. These issues remain unsolved. The CRS stated that the Air Force has reported five technical problems currently being experienced in the F-22A program:

“Structures Retrofit Program. SRP is a planned improvement effort required to manage weapon system service life and ensure the aircraft meets the design service life of 8,000 flight hours. As service life deficiencies were identified during Engineering, Manufacturing and Development (EMD) structural testing, (mid fuselage, engine bay, aft boom, forward boom, wing leading edge) corrections were incorporated into the production line. The SRP retrofits those aircraft delivered prior to the incorporation of all corrective actions into the production process (aircraft 4010-4083). Work will begin as early as January 2007 and is scheduled to conclude in 2010.

Forward Boom Heat Treat Issue. In December 2005, the Air Force was notified that some titanium forward boom frames were not properly heat-treated. This improper heat treatment created the potential for forward boom frames with anomalous material properties (e.g. extensive cracking) in aircraft 4017-4107. Immediate studies indicated this is not a safety of flight issue, but the cost of inspections and steps potentially required to address this anomaly are currently unknown.

Canopy Actuator. On 10 Apr 06, an F-22A ground-aborted because the canopy would not open. This problem was caused by screws backing out of the internal locking mechanism in the canopy actuator. An inspection for potentially faulty actuators identified 42 potentially faulty actuators (35 installed on F-22As and 7 spares). A 30-day repetitive mechanical inspection has been implemented to ensure proper operation of the

actuators and potentially faulty actuators will be replaced through retrofit expected to be complete by February 2007.

Air Recharge System. The Air Recharge System (ARS) experienced three problems: leakage, auto-ignition failures, and an ARS rupture during flight. The ARS replenishes the Stored Energy System after engine start. Fixes to these problems have been initiated.

Nose Landing Gear. On 11 May 06, an F-22A (aircraft 4020) experienced an uncommanded nose landing gear retraction and the nose of the aircraft fell to the ground, landing on the main weapons bay doors. A similar incident occurred on 18 Mar 2003 to aircraft 4008. The technical solution preventing uncommanded nose gear retractions has been incorporated into the production process and is being fielded throughout the fleet. The findings of Safety Investigation Board are pending.

In addition to those problems reported, at least one production issue may also warrant concern. The F-22 aircraft exiting the Lockheed Martin final assembly plant have experienced an increase in gross takeoff weight of 800 lbs from the beginning of production to the present. Increased weight reduces aircraft performance.

It may be useful to note that the technical problems identified above are those that are currently known, and reported. As mentioned in testimony before the Senate Armed Services Committee on March 28 2006, the titanium problem that the Air Force discovered in December 2005 was not reported to Congress until March 2006. Based on this experience, it may be that additional technical problems exist in the F-22A program of which Congress has not yet been informed. Further, the Government Accountability Office (GAO) and others have expressed concern that the Air Force's plan to integrate a new, multi-mode, air-to-ground capable AESA (Agile, Electronically Steered Array) radar into the F-22 could present unforeseen and significant technical challenges. The Air Force does not share the GAO's concern, and argues that modernizing the F-22 radar is no more challenging than, for example, retrofitting existing F/A-18/E/F Super Hornets with new AESA radars.

Technical problems experienced historically

According to the GAO, increased labor rates coupled with technical problems associated with avionics, airframe, and engines have caused 70% of the F-22 cost growth.

Avionics: overcoming avionics software instability was a key challenge that led to an extension of the EMD phase (engineering, manufacturing and development).

Airframe: Lockheed Martin experienced a number of technical challenges with the F-22 airframe, including buffeting of the vertical tail fin, a separation of materials in horizontal tail fin, and "bumps on external shape due to repackaging internal systems."

Engine: F119 engine fuel consumption has been unsatisfactory, and problems were experienced with the engine's core combustor, which did not demonstrate desired temperature levels. Another disappointment was manufacturing problems with fuel-air heat exchangers which reduced effectiveness.

Cockpit Canopy: The F-22 has experienced on-going challenges with the cockpit canopy, including cracking and reliability.

Maintenance and Support Requirements: The F-22 does not meet the Air Force Airlift Key Performance Parameter (KPP) of 8 C-141 equivalents to move a F-22 squadron. 8.8 C-141 equivalents are required. Further, mean time between maintenance is 3 to 5 times the Air Force requirement of ~2 flight hours between maintenance.

Although it is difficult to draw a direct correlation between technical problems and aircraft accidents (also known as mishaps), the F-22 mishap rate may be noteworthy, and may reflect on the technical challenges experienced. The F-22 program experienced three Class A mishaps (>\$1 million in damage) in 14 months." (Appendix G)

Air Force –

The Air Force presentation provides evidence that the modernization of systems essential to the new mission of the F-22A has yet to be completed. The main concern is a new radar system, which is considered by the Air Force to be integral to the F-22A's ground-attack and intelligence gathering capabilities.⁸ The radar system is not even scheduled to be received by the Air Force until November 2006, and the software is not scheduled to be completed until 2010. The nature of this funding establishes the case that the F-22A is still receiving, and will continue to receive, essential upgrades that are still being developed and have yet to be tested. This ultimately affects the F-22A's ability to prove that the program complies with the "Stable Design" requirement. (Appendix B)

Requirement 5: That the estimates of both the cost of the contract and the anticipated cost avoidance through the use of a multiyear contract are realistic.

GAO –

"We believe this is questionable at this time and will require the Air Force to submit a detailed and independent estimate of the cost and will require some evidence that the contractor is willing to sign up to this cost." [Emphasis added] (Appendix A)

⁸ POGO realizes that the F-22A modernization plan is considered a separate program from the MYP. However, the radar system is integral to the capacity of the aircraft to meet its mission, and therefore is relevant to the stability of design for the aircraft.

CRS –

“The DoD has reported 10 cost over-runs in the F-22 program. (DoD is required to report cost overruns in the SAR when the cost estimate is 15% higher than past SAR.) ... Adjusting for inflation, the program unit acquisition cost (PUAC) estimate in 1991 was \$114 million per aircraft (\$05) and in 2006 the estimate was \$354 million per aircraft (\$05). In real terms, this represents a per-aircraft increase of over 200%.”(Appendix G)

DCAA –

A November 9, 2005, Defense Contract Audit Agency (DCAA) presentation⁹ concluded there is “Moderate to high risk ... [in] Cost Estimate Development” after discovering \$141 million in unsupported, inaccurate, and defective data in Air Force F-22A cost estimates. (Appendix H)

House Government Reform Subcommittee on National Security Chairman Christopher Shays –

The Air Force has a history of not providing accurate cost estimates, and there is little reason to believe that it will be any more accurate for this round of procurement. For instance, five years ago, the House Government Reform Subcommittee on National Security was frustrated in getting accurate F-22A program cost estimates from the Air Force. The Subcommittee had tasked the GAO with reviewing the F-22A program’s cost reduction plans. What the GAO found was a \$7 billion variance between the Air Force’s cost estimates and those made by the Office of the Secretary of Defense’s Cost Analysis Improvement Group. On August 20, 2001, Subcommittee Chairman Chris Shays wrote to House Armed Services Chairman Duncan Hunter that, “. . . as you proceed with your deliberations on the pace and scope of the F-22A program, please be advised we can have little confidence in the accuracy of production cost estimates and less confidence in the legitimacy of projected production cost savings based on those estimates.” (Appendix I)

Requirement 6: In the case of a purchase by the Department of Defense, that the use of such a contract will promote the national security of the United States.

At the end of the day, perhaps the most important question remains – why are we continuing to fund a Cold War-era weapon that was designed to counter the next-generation Soviet fighters that were never constructed? In fact, the GAO stated, “Based on our review, in our opinion, the DOD has not demonstrated the need or value for making further investments in the F-22A program.” (Appendix A) While the final requirement of the law – that it promotes the national security of the United States – is a matter of judgment and is not quantifiable, the ballooning costs of this aircraft render it impossible to meet the Air Force's own stated requirements for 381 F-22A’s “in order to meet the needs of the warfighter.” If it is too expensive to buy enough aircraft to meet our national security needs, this certainly challenges the assumption that the final requirement has been met.

⁹ The Defense Contract Audit Agency is the Pentagon's audit agency.

A FINANCIAL CONFLICT OF INTEREST?

In early 2006, the Pentagon's Office of the Under Secretary of Defense, Acquisition, Technology and Logistics requested that a report be prepared by IDA. IDA is a federally funded research and development center (FFRDC) which has assisted the DOD since it was established in 1947 by Secretary of Defense James Forrestal.¹⁰ IDA states that it does not work for the private industry and that it takes "...great pride in the high caliber and timelessness of its analyses, which are produced in an atmosphere that encourages independent thinking and objective results."¹¹ The report, "F-22 Multiyear Procurement Business Case Analysis," found that the F-22A program met all the criteria needed for the program to be purchased under a lucrative multiyear procurement (MYP) strategy.

Admiral Dennis C. Blair, USN (Ret.), joined IDA in October 2002 and was promoted to President just one year later. Also in October 2002, Admiral Blair joined, and still sits on, the Board of Directors for defense contractor EDO Corporation, a subcontractor on the F-22A.¹² According to EDO's website, EDO manufactures essential suspension and release equipment for the F-22A. The LAU-14/2 AMRAAM Vertical Eject Launcher is the component of the F-22A that carries and ejects the AIM-120C missiles.¹³ He currently controls 1,787 shares of stock and 30,000 stock options in EDO, worth well over half a million dollars if he chose to exercise those options. (Appendix E)

As a subcontractor on the F-22A, EDO has a significant financial stake in a multiyear procurement for the F-22A program. According to an analysis by POGO, Lockheed Martin has awarded EDO with approximately \$90 million in contracts for components for the F-22A, \$68.4 million of which have been awarded since Admiral Blair joined EDO.

An MYP can significantly impact the value of the company's stock over time as investors perceive that such a contract will provide stability of revenues. According to one report: "multi-year contracts substantially increase stock valuations due to investor perception of

¹⁰ "About IDA," Institute for Defense Analyses, 2005, <http://www.ida.org/IDANew/Welcome/history.html> (Downloaded July 24, 2006).

¹¹ Ibid.

¹² "Admiral Dennis C. Blair and James Roth Join Board of Directors of EDO Corporation," EDO Corporation Press Release, October 1, 2002, http://www.edocorp.com/pr2002/02r1001_2.htm (Downloaded July 24, 2006).

¹³ "Corporate Overview," EDO Corporation, <http://www.edocorp.com/CorporateOverview.htm> (Downloaded July 24, 2006).

controlled risk.”¹⁴ A National Defense University study on the Aircraft industry noted: “If the F-22 proceeds with production as expected, a multi-year contract would provide a needed financial boost to Lockheed-Martin.”¹⁵

Admiral Blair became director of EDO the same month that he began working at IDA. He serves as Chairman of the Compensation Committee and is a member of the pension investment committee. As a member of the Board of Directors he is an essential figure in the structuring, direction, and overall success of EDO.

IDA is a registered FFRDC and is considered a contractor of the Federal government. As a contractor, IDA does not fall under the same conflict of interest rules as federal employees. POGO contacted IDA to determine their conflict of interest policies, and received an email stating, “Due to the nature of our work at the Institute for Defense Analyses, we are unable to provide information about conflict of interest policies or forms. If you are seeking general information about IDA, please visit our website at www.ida.org.” (Appendix E) After further research, POGO discovered that FFRDCs such as IDA have enjoyed the credibility of being regarded as an arm of the government, yet they are not subject to any such legal restrictions.

It is important to emphasize that POGO is in no way suggesting that Admiral Blair has violated any laws or regulations. There is a disconnect between the perception that FFRDCs have to comply with conflict of interest laws and the reality. This problem is worth Congress’ further attention.

While this is perfectly legal, it raises many ethical concerns. IDA’s report has been cited by Lockheed Martin, multiple Senators, and the Air Force as the primary evidence that the MYP of the F-22A will save the American taxpayer millions of dollars. On the floor of the Senate, many Senators claimed that the information provided by IDA was more accurate than that provided by the GAO.¹⁶ IDA’s report, in fact, was the pivotal document upon which MYP status for the F-22A was granted by the Senate.

¹⁴ McAleese, James, “Defense Industry Models Must Change to Draw New Investors,” *National Defense*, June 2001, http://www.nationaldefensemagazine.org/issues/2001/Jun/Defense_Industry.htm (Downloaded July 24, 2006).

¹⁵ “Aircraft,” Industrial College of the Armed Forces, Industry Studies Program, <http://www.ndu.edu/icaf/industry/IS2001/aircraft.htm> (Downloaded July 24, 2006).

¹⁶ *Congressional Record*, June 22, 2006, http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2006_record&page=S6338&position=all (Downloaded July 24, 2006).

CANCELLATION COSTS – HOW TO BUY A LEMON

The decision last year by Congress to fully fund the C-130J multiyear procurement offers a relevant lesson for the current debate on the F-22A – that is a lesson on how the Air Force is forcing the American taxpayer to buy its lemons. Having succeeded in misleading Congress on the C-130J deal, the Air Force and Lockheed Martin are putting the same playbook into action on the F-22A. One of those plays is to lock the American taxpayer into buying the Air Force’s pet projects, then create the impression that cancellation is impossible.

The C-130J is such a failure that the DOD sought its termination under Program Budget Decision 753, against the wishes of the Air Force. In 2005, although POGO released a copy of the C-130J contract showing a cancellation ceiling of \$440 million, the Air Force misinformed the Secretary of Defense and Congress, stating that it would cost \$1.78 billion to cancel the contract.¹⁷ In June 2006, The Pentagon IG (DOD IG) issued a report confirming that \$440 million was the most it would cost to cancel the contract, noting: "By definition, a contract cancellation ceiling represents the Government's maximum liability."¹⁸

As a result of the Air Force’s misleading claims about the C-130J, the American taxpayer is now locked into paying an additional \$4 billion on an aircraft that cannot even be taken into combat. Indeed, as the *New York Times* reported last year, the C-130J’s primary use appears to be that it creates added justification to keep certain U.S. military bases open (because the C-130J must be deployed domestically), helping Members of Congress who are fighting base closures.¹⁹ As the DOD IG noted in a June 2006 report, "... ten years after the first award in 1995, the contractor was still delivering non-compliant aircraft."²⁰

As with the F-22A, the DOD IG report on the C-130J found that the Air Force failed to request cancellation funds – as is required under multiyear procurement rules – and then issued inaccurate cancellation estimates:

... the FY 2006 President's Budget did not include sufficient funds to terminate the Air Force C-130J aircraft procurement and accelerate the Marine Corps KC-130J aircraft procurement if the unsupported cost estimate was valid.²¹

¹⁷ "Letter from Project On Government Oversight and Taxpayers for Common Sense to Secretary of Defense Donald Rumsfeld," February 24, 2005, <http://www.pogo.org/m/cp/cp-Rumsfeld-C130J-02242005.pdf> (Downloaded July 24, 2006).

¹⁸ "Contracting and Funding for the C-130J Aircraft Program," Department of Defense Inspector General, June 21, 2006, <http://www.dodig.osd.mil/Audit/reports/FY06/06-093.pdf> (Downloaded July 24, 2006).

¹⁹ Wayne, Leslie, "The Flawed Plane Congress Loves," *New York Times*, March 24, 2005.

²⁰ "Contracting and Funding for the C-130J Aircraft Program," Department of Defense Inspector General, June 21, 2006, <http://www.dodig.osd.mil/Audit/reports/FY06/06-093.pdf> (Downloaded July 24, 2006).

²¹ Ibid.

Of course, requesting the cancellation costs from Congress would require an accurate, publicly available figure subject to review and debate. So far, the Air Force has not provided such a figure for its proposed F-22A multiyear procurement, which could lead to the same exaggerated cancellation estimates as the C-130J if the F-22A program faces trouble.

Indeed, as recently as February 2006, a Power Point presentation from the Air Force showed that its plan was to get a special waiver from the Office of the Secretary of Defense that would allow the Air Force to fund cancellation costs outside the contract: "Termination liability and contract cancellation covered by Air Force outside F-22 budget authority. ... Need OSD(C) waiver to allow termination liability/cancellation ceiling to be an unfunded contingent liability." (Appendix B, page 18)

In March 2006 Congressional testimony, the CBO described how cancellation of a multiyear procurement would put the government and the taxpayer at greater risk if funds were not set aside:

But with no funds set aside specifically for cancellation costs, the Air Force would have to terminate orders for some or all of the aircraft that had already entered production if a decision was made to cancel subsequent orders. Thus, if it canceled the remaining years of the multiyear contract at the end of the first year, the government would not only forgo the aircraft to be produced in later years but also would not receive all of the planes it had ordered in the first year – and the taxpayers' investment in those aircraft would be lost. In particular, at the end of the first year, the Air Force would have ordered 20 aircraft. If the government decided to cancel the contract at that point but had not set aside funds specifically for cancellation costs, it would not only forgo the 40 aircraft that had not entered production, but, to free up funds for cancellation costs, it would have to stop work on some of the 20 aircraft that had already been ordered. The Air Force's proposal differs from the practice of full up-front funding in two ways: it seeks incremental funding for acquiring capital assets, and it provides for a multiyear procurement without funding for possible cancellation costs.²²

The CBO further stated, "On the basis of cancellation liabilities for other multiyear programs, that amount could be between 5 percent and 15 percent of contract costs. ... According to the AirForce, the 60 airplanes would cost about \$10.5 billion in total." As a result, cancellation costs could reach as much as \$1.6 billion if it follows the pattern set by other multiyear procurements.²³

²² Statement of Donald B. Marron, "The Air Force's Proposal for Procuring F-22 Fighters," Congressional Budget Office, March 28 2006, <http://www.cbo.gov/ftpdocs/71xx/doc7104/03-28-F-22.pdf> (Downloaded July 24, 2006).

²³ Marron statement, pg 7.

CONCLUSION

In conclusion, it is clear that independent congressional analysts have significant concerns with accepting the F-22A program as a candidate for multiyear procurement. Based on its own research, POGO does not believe the F-22A program meets multiyear procurement requirements, and recommends that Congress strike language authorizing the MYP until such time that the program meets those requirements.

RECOMMENDATIONS

1. POGO recommends that the language authorizing multiyear procurement of the F-22A be struck immediately, to be reconsidered only when the program can more thoroughly justify its capabilities to fulfill the requirements of an MYP contractual agreement.
2. Define “substantial savings” in Requirement 1 of Title 10 U.S.C. Section 2306(b). POGO further recommends that substantial savings be defined as 10%, as has been done in the past. Establishing 10% as a permanent definition for substantial savings will provide a reasonable measure of accountability rather than leaving the standard open to interpretation.
3. Require an independent analysis of cancellation costs for the F-22A and all proposed multiyear procurements, and that those analyses be provided to Congress before it approves an MYP. Furthermore, the Pentagon should be required to request funding to cover those cancellation costs in the event the program is terminated.
4. Apply federal conflict of interest laws to federally funded research and development centers. These organizations are fully funded by the federal government and should be required to meet the same ethics standards as federal agencies.