

# United States Senate

WASHINGTON, DC 20510-4705

January 20, 2011

Chairman Carl Levin  
Senate Armed Services Committee  
Russell Senate Office Building, Room 228  
Washington, DC 20510

Dear Chairman Levin,

Thank you for agreeing to hold a Senate Armed Services Committee hearing on the Air Force's troubling release of sensitive proprietary data associated with its long overdue decision on how to best replace our nation's aging aerial refueling tanker fleet. As you are aware, this tanker bid is crucial to our nation's national security, and as one of the largest Defense Department acquisitions ever, I believe there are several questions which must still be answered to ensure that the Air Force is providing a level playing field for every bidder for this \$35 billion contract.

As you know, in November 2010, the Air Force announced that a 'clerical error' resulted in some source-selection information being provided to both KC-X bidders concerning their competitor's offer. Even if this release was inadvertent, it can have far reaching consequences if not addressed properly, if it ends up violating laws and fair-competition regulations, or if it directly impacts a bidder's strategy for establishing its final price in a competition. From day one, the Air Force has attempted to gloss over the incident and minimize its potential impact on the cost adjustment phase of the source selection of the KC-X tanker competition. Congress must not be as indifferent as the Air Force when so many taxpayer dollars and domestic jobs are at stake.

There remain a number of gaps in our understanding of what happened after the release of the competitively sensitive information to the bidders, and the decisions and actions the Air Force took in response. At the hearing, I believe it is critical to have the Air Force provide a complete minute-by-minute accounting of exactly what happened. For example, I hope the Committee will ascertain: 1) What were the results of the internal and external review I understand the Air Force Chief of Staff ordered in the aftermath of the incident? 2) Were the actions taken consistent with existing law and the Federal Acquisition Regulations (FAR)? 3) Were any other remedies considered? 4) How long did the Air Force take to come to this decision? And 5) what steps were taken to ensure EADS did not gain an unfair competitive advantage by having Boeing data for more than a month before the investigation was completed by the Air Force?

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It is important to know how the Air Force first became aware of the incident and its immediate response when contacted by one of the bidders. What actions did Boeing and EADS/Airbus each take when they discovered the Air Force's mistake? Specifically, 6) what did each company tell the Air Force it did and 7) what did the Air Force's forensic analysis show? 8) Were each company's actions consistent with ethics rules, standards, and practices described in the Air Force's ethics briefing each bidder received?

Finally, the hearing needs to shed light on how the Air Force's handling of its mistake may impact the competition going forward. In particular, 9) will the data release compromise the part of the bidding process that includes the three adjustments to price? If so, 10) what does this mean for the competition?

I look forward to working with you and rest of the Armed Service Committee in getting to the facts. Moving forward on the KC-X tanker is absolutely critical to our nation's workers, to the American taxpayer, and to our war-fighters who depend on and deserve the best equipment available.

Sincerely



Maria Cantwell  
U.S. Senator