

GAO

Report to the Chairman, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, House of Representatives

April 1989

AIR FORCE LOGISTICS

Conflict of Interest in Procurement of C-5 Crash Damage Kits



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**National Security and
International Affairs Division**

B-231335

April 12, 1989

The Honorable John D. Dingell
Chairman, Subcommittee on Oversight
and Investigations
Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

On July 29, 1988, you asked us to review the purchase of C-5 crash damage kits by the San Antonio Air Logistics Center to (1) examine the circumstances leading to the ordering of kits, (2) examine the justification for buying the kits, (3) review the procurement process, including the pricing of parts, and (4) review an allegation that an U.S. Air Force Colonel (now retired) violated conflict of interest laws during the procurement process. As agreed with your Office, this report responds only to the last issue. A subsequent report will address the other issues.

The allegation is that the Colonel, who was Chief of the Airlift Aircraft Systems Program Management Division at the San Antonio Air Logistics Center, contacted Lockheed Aeronautical Systems Company about future employment before his retirement, creating a potential conflict of interest. This allegation also raised concerns that the Colonel's approval of the requirement for the C-5 crash damage kits on April 25, 1986, was influenced by prospects of future employment at Lockheed, the manufacturer of the kits. About 7 months after his July 1, 1986, retirement from the Air Force, the Colonel began working for Lockheed in the International Marketing Division.

Results in Brief

Although the Colonel had contacts with Lockheed about future employment before his retirement, we did not find any evidence to indicate that the Colonel's official actions regarding the purchase of kits for the C-5 aircraft were influenced by the contacts with Lockheed. His major involvement with the kit procurement occurred before any identified contacts with Lockheed about employment. However, in our opinion, he did not comply with the requirements of 10 U.S.C. 2397a, relating to private employment contacts between certain Department of Defense procurement officials and defense contractors.¹ Specifically, he did not properly report his contacts with Lockheed before retirement. He also

¹Department of Defense regulations addressing this section were issued on May 6, 1987.

did not disqualify himself from participating in any procurement function with Lockheed after his contacts.

The Secretary of Defense, under section 2397a, has the responsibility to determine whether persons have failed to make reports promptly or have failed to disqualify themselves if required to do so and has the authority to impose penalties. Accordingly, today we have referred this case to the Secretary.

More details on the results of our review are provided in appendix I. Appendix II provides a chronology of key events related to this issue.

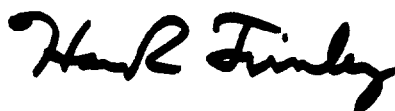
Objective, Scope, and Methodology

The objective of our review was to determine the validity of the allegation involving the Colonel. Our work included interviewing the Colonel involved in the allegation, active and retired Air Force personnel involved with developing the requirement for the kits, and Lockheed officials. Other data we reviewed included the Colonel's official personnel file and travel vouchers and Air Force procurement files. We performed our audit work from August 1988 through February 1989 in accordance with generally accepted government auditing standards. In accordance with your Office's request, we did not obtain written comments on a draft of this report. However, we obtained the views of responsible agency officials and the Colonel and incorporated them, where appropriate, in the report.

As arranged with your Office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 10 days after its issue date. At that time we will send copies to the Director, Office of Management and Budget, and the Secretary of the Air Force. We will provide copies to other interested parties upon request.

GAO staff who made major contributions to this report are listed in appendix III.

Sincerely yours,



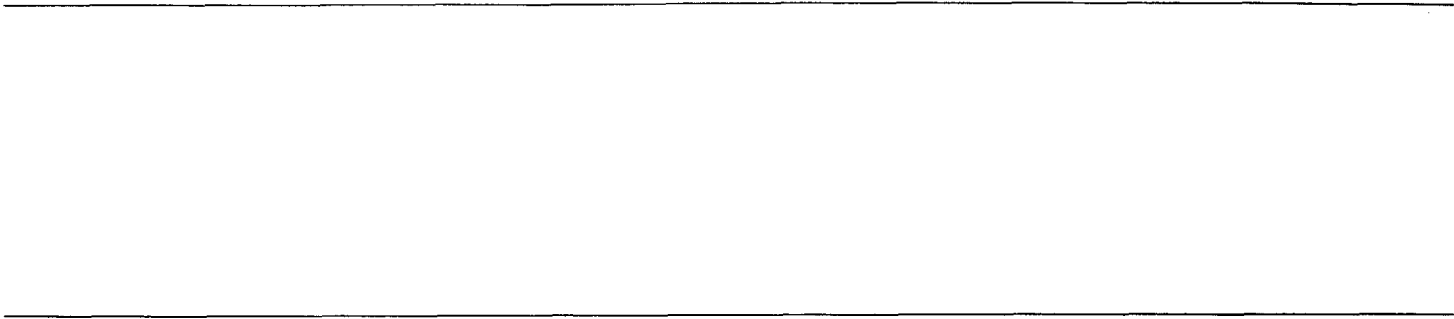
Harry R. Finley
Director, Air Force Issues

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Abbreviations

AFB	Air Force Base
ALC	Air Logistics Center
DOD	Department of Defense
GAO	General Accounting Office
MAC	Military Airlift Command



Conflict of Interest Issue Associated With C-5 Crash Damage Kits

The Air Force began considering the acquisition of C-5 crash damage kits after extensive damage occurred to the undersides of two C-5As in crash landings in 1983—the first, on July 31, 1983, at Shemya Air Force Base (AFB) and the second, on November 17, 1983, at Travis AFB. On February 3, 1984, Lockheed Aeronautical Systems Company, formerly Lockheed-Georgia (the manufacturer of the C-5) developed a proposal for C-5 crash damage kits. The kits were planned to include structural components and other parts that could be used in repairing certain crash damage. Lockheed discussed this proposal on March 14, 1984, with officials of the San Antonio Air Logistics Center (ALC), which was responsible for repair of the C-5. On September 9, 1985, the outer wing of a C-5 aircraft at Dover AFB was damaged by lightning. As a result, the ALC added components and parts to repair outer wing sections to the crash damage kit requirements. In 1985 the Military Airlift Command (MAC)² representative at the ALC suggested that MAC Headquarters emphasize the importance of the crash damage kits.

At the San Antonio ALC the Airlift Aircraft Systems Program Management Division³ is responsible for determining kit requirements. The Colonel, who was the subject of the allegation, became Chief of the Division in June 1984. The Colonel signed a memorandum dated April 25, 1986, to the Resource Management Division describing the requirement and acquisition plan for C-5 crash damage kits and requesting assistance in obtaining funds for the purchase of the kits. The ALC issued the first of two provisioned item orders for the kits to Lockheed on December 8, 1986, and the second on February 27, 1987.

The Colonel retired from the Air Force on July 1, 1986. He began working for Lockheed on February 2, 1987, as a regional representative in the International Marketing Division.

No Evidence of Influence by Potential Employment

We did not find any evidence to indicate that the Colonel's actions in the C-5 crash damage kit procurement was influenced by potential employment. His major role appears to have been limited to signing the April 25, 1986, memorandum. The memorandum was prepared by a technical engineer, according to the engineer and other officials. The engineer said

²MAC is responsible for airlift aircraft, including the C-5.

³The Division decides work load, sets priorities, and selects methods of total logistics support of seven different types, models, or series of aircraft, including the C-5. It is responsible for engineering, technical, and budgetary aspects of overhaul, repair, procurement, and so on, of the assigned aircraft systems. It manages annual expenditures of about \$175 million.

that a Branch Chief in the Colonel's Division directed him to prepare the memorandum. The memorandum was approved by the engineer's supervisor and the Branch Chief before the Colonel signed it.

The Branch Chief and the Deputy Chief of the Airlift Aircraft Systems Program Division were the primary promoters of the kits, according to their statements and those of other ALC officials. The Deputy Chief stated that he developed the idea for the kits while assigned as the MAC representative at the ALC. In a 1985 memorandum to MAC Headquarters he summarized the request for the kits and suggested that MAC emphasize the importance of the kits to the ALC. He stated that procurement of the C-5 kits was one of his prime objectives when he became Deputy Chief in March 1986 and that the Colonel had little involvement in the planning to procure the kits. In addition, the Colonel's supervisor in the Directorate of Materiel Management stated that the procurement had the support of key ALC officials.

We did not identify any significant action by the Colonel in procuring the crash damage kits other than signing the April 1986 memorandum. This occurred before any identified contact with Lockheed about employment. When the Colonel retired on July 1, 1986, the kits were still an unfunded requirement. The availability of funds for the kits was not given final approval until November 1986. We did not find any evidence that the Colonel had any role in the procurement after his retirement.

Code Requirements Not Met After Employment Contacts

Contacts between defense contractors and certain Department of Defense (DOD) officials, identified as "covered defense officials," regarding future employment opportunities for the officials are regulated by 10 U.S.C. 2397a, which became effective in November 1985.⁴ The Colonel was a covered defense official because he was on active duty in the armed forces in a pay grade of O-4 or higher. As a covered defense official who participated in the procurement function,⁵ the Colonel was required by section 2397a to report contacts concerning employment with a defense contractor to both his supervisor and the designated agency ethics official and disqualify himself from future participation in

⁴DOD regulations addressing this section were issued on May 6, 1987.

⁵Section 2397a provides, "The term 'procurement function' includes, with respect to a contract, any function relating to (A) the negotiation, award, administration, or approval of the contract; (B) the selection of a contractor; (C) the approval of changes in the contract; (D) quality assurance, operation and developmental testing, the approval of payment, or auditing under the contract; or (E) the management of the procurement program."

procurement functions with that contractor. The Colonel did not comply with the reporting requirement or disqualify himself.

The Colonel participated in procurement functions for the C-5 kits, as evidenced by his signature on the April 1986 memorandum. That memorandum states the requirement for the kits, specifies the contractor that will perform the work, describes an acquisition plan, and details the funding requirements. In response to the memorandum, the Resource Management Division at the ALC informed the Colonel in May 1986 that he "...as the originating activity, should prepare fully defined, quantifiable, defensible procurement package(s)." Based on the responsibilities indicated by these documents, the Colonel was involved in procurement functions as defined by the section. Accordingly, he was required to comply with the requirements for reporting contacts concerning employment and disqualifying himself from procurement actions involving Lockheed.

We identified three contacts the Colonel had with Lockheed concerning future employment before he retired from the Air Force. He spoke with Lockheed officials on two occasions regarding future employment and submitted an application to Lockheed before he retired. However, he did not interview with Lockheed until after he retired and did not receive a confirmed offer of employment with Lockheed until December 23, 1986. Nevertheless, the Colonel's involvement with the procurement from Lockheed and his contacts with Lockheed about future employment required compliance with the reporting and disqualifying requirements.

The Colonel told us that he was not aware of section 2397a when he was nearing retirement. However, he said that he recalled telling his immediate supervisor and possibly the Major General, who heads the ALC, that he had filed an employment application with Lockheed. He believed that this would "cover him." Neither of the officials, however, recall being notified by the Colonel of contacts with Lockheed about potential employment. Section 2397a requires a covered employee to report to the designated agency ethics official in addition to reporting to his or her supervisor. Neither records of the Judge Advocate, the designated agency ethics official for the ALC, nor the Colonel's statements indicate that the Judge Advocate's office was notified of the contacts. Additionally, neither Air Force records nor the Colonel's statements indicate his disqualification from dealings with Lockheed. He continued to function in his usual capacity and had further contact with Lockheed in procurement functions as defined by section 2397a. In June 1986 he made a visit to Lockheed to review the status of ongoing work.

Appendix I
Conflict of Interest Issue Associated With C-5
Crash Damage Kits

Under section 2397a, the Secretary of Defense is authorized to determine if a person has failed to report promptly contacts with a contractor or failed to disqualify himself or herself if required to do so. Furthermore, penalties are identified. The section provides that where the Secretary so determines “... (i) the person may not accept or continue employment with the defense contractor during the 10-year period beginning with the date of separation from government service; and (ii) the Secretary may impose on the person an administrative penalty in the amount of \$10,000, or in such lesser amount as may be prescribed by the Secretary, taking into consideration all the circumstances.”

Chronology of Key Events Relating to Conflict of Interest Issue

July 31, 1983	C-5A was damaged in a crash landing at Shemya AFB, Alaska.
November 17, 1983	C-5A was damaged in a gear-up crash landing at Travis AFB, California.
February 3, 1984	An internal Lockheed document provided preliminary information for establishing crash damage kit configurations.
March 14, 1984	San Antonio ALC and Lockheed officials met concerning the procurement of C-5B crash damage kits.
December 14, 1984	First statement of work was prepared for C-5 fuselage crash damage kits.
April 19, 1985	The ALC Airlift Aircraft Systems Program Management Division prepared an internal memorandum requesting that a request for proposal be initiated for crash damage kits.
August 1, 1985	Statement of work prepared in December 1984 for fuselage kits was revised.
September 9, 1985	The outer wing of a C-5A was damaged by lightning at Dover AFB, Delaware.
November 4, 1985	An ALC internal memorandum suggested that kits should be procured using the revised statement of work and that Lockheed would be providing a rough order of magnitude price on the statement of work.
April 1986	The Colonel, who was the Chief of the Airlift Aircraft Systems Program Management Division, announced his intention to retire and submitted the paperwork. Retirement orders were prepared on April 23, 1986.

Appendix II
Chronology of Key Events Relating to
Conflict of Interest Issue

April 25, 1986	The Colonel signed a memorandum to the ALC's Resource Management Division establishing requirements, acquisition plan, and funding requirements for C-5 crash damage kits.
May 1986	The Colonel told a Lockheed official that he filed paperwork to retire and would be seeking employment after retirement. The Lockheed official provided this information to the Director of Lockheed's International Marketing Division.
May 15, 1986	On or about this date, the Colonel and a Lockheed official discussed employment, and the Colonel requested an application for employment.
May 19, 1986	Lockheed sent the Colonel an application for employment.
May 24, 1986	The Colonel completed an application and later submitted it to Lockheed. According to the Colonel, he discussed the Lockheed application and contacts with his immediate supervisor and possibly with the ALC Commander.
May 28, 1986	The ALC added the crash damage kit requirement for \$88 million to the March 1986 budget cycle. MAC Headquarters initiated the action, and the C-5 System Program Manager concurred with it.
May 28, 1986	The Colonel signed Statement of Employment (Form 1357), as required by DOD regulations. The statement, which enables DOD to determine whether retired regular officers are engaged in activities prohibited by laws or regulations, reflected that the Colonel would not be employed as of the date of his retirement (July 1, 1986).
June 2, 1986	Lockheed received the Colonel's employment application.
June 2 to 5, 1986	The Colonel made a visit to Lockheed to review the status of ongoing work.

**Appendix II
Chronology of Key Events Relating to
Conflict of Interest Issue**

July 1, 1986	The Colonel retired from the Air Force.
July 1986	A Lockheed official interviewed the Colonel for possible employment but told him that a position was not available at that time.
July 29, 1986	MAC Headquarters sent a message to the Director of Materiel Management at the ALC supporting the procurement of the C-5 kits.
July through December 1986	The retired Colonel sought employment with several companies.
September 30, 1986	The ALC prepared a memorandum describing the management philosophy and general strategy for provisioning crash damage kits.
December 2, 1986	The ALC notified Air Force Headquarters and the Air Force Logistics Command of intentions to obligate \$44,560,816 (fiscal year 1987 spare parts funds) for the kits under an undefinitized contract.
December 8, 1986	The ALC issued the first order for C-5 crash damage kits at an estimated value of \$44,560,816.
December 23, 1986	Lockheed offered the Colonel employment.
January 6, 1987	Lockheed sent confirmation of the Colonel's acceptance of the employment offer.
February 2, 1987	The Colonel reported as an employee in Lockheed's International Marketing Division responsible for marketing C-130 aircraft in Middle Eastern countries.
February 3, 1987	The Colonel signed an updated Statement of Employment (Form 1357) that showed new employment with Lockheed.

**Appendix II
Chronology of Key Events Relating to
Conflict of Interest Issue**

February 26, 1987

The ALC notified Air Force Headquarters and the Logistics Command of its intentions to obligate \$24,086,816 (\$23,552,066 of fiscal year 1985 spare parts funds and \$534,750 of fiscal year 1986 funds) for the kits under an undefinitized contract.

February 27, 1987

The ALC issued the second provisioned item order at an estimated value of \$24,086,816 for C-5 crash damage kits. These kits were in addition to the kits under the first order.

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