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United States Senate
COMMITTEE ON ARMED SERVICES
WASHINGTON, DC 20510-6050

December 8, 2015

The Honorable Ashton B. Carter
U.S. Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Secretary Carter:

I write to express concern about the direction of the Department of Defense's (DoD) national security space launch program, the Evolved Expendable Launch Vehicle (EELV) program. I am troubled, in particular, by the explanations that the incumbent contractor, United Launch Alliance (ULA), has offered for why it will not compete for the first competitive launch opportunity under Phase 1A of EELV, which provides for the launch of a GPS III satellite. These assertions have major implications for both the DOD and the Congress, especially the clearly-established legislative priority to eliminate the DoD's reliance on Russian-made rocket engines and whether the DoD should continue paying ULA a nearly $1 billion annual subsidy whether it actually launches satellites under the program or even chooses to compete for those launches.

Among the troubling and specious claims that ULA has made in connection with its announcement not to compete for the Phase 1A launch is its assertion that it (1) cannot submit a proposal that complies with the request for proposals (RfP) because it does not have the cost accounting systems needed to certify that funds from other government contracts, such as federal government subsidy payments, will not benefit the GPS III launch mission; and (2) does not have any Atlas engines available to bid in order to submit a timely proposal. ULA's assertion that the Phase 1A launch is basically a "lowest price, technically acceptable" competition, unsuitable for launch contracts, is erroneous. In form and substance, this competition clearly contemplates a "best value" source selection, supported by a request for proposals that calls for a careful evaluation of performance, launch operations, schedule and price.

ULA's claim that it lacks the accounting systems needed to certify that funds from other government contracts, such as the EELV Launch Capability (ELC) subsidy, will not benefit the Phase 1A launch is particularly troublesome. As you know, the RfP's requirement in this regard is important because it ensures that the Air Force is able to conduct an "apples-to-apples" comparison with new entrants that have not similarly benefited from government subsidies and ensure that such subsidies will not unfairly benefit ULA's proposal to launch GPS III.

As you are aware, on September 29, 2015, the Air Force awarded an ELC contract to ULA valued at $882 million—the latest such contract the Air Force has awarded to ULA since ULA became the only source for launches under the EELV program. The ELC contract, unlike other payments that the Air Force makes to ULA for launch services, subsidizes costs not

directly related to the launch-vehicle hardware, including the depreciation of ULA's launch vehicles and infrastructure. In paying ULA for such fixed launch costs and executing the EELV program under a cost-plus contract, the DoD has reimbursed ULA for allowable, reasonable, and allocable costs for its launches, while requiring ULA to reimburse it on a per-launch basis for launches that ULA sells to its non-DoD customers. To do so, ULA has had to maintain sufficient cost accounting systems within the company.

Yet now, in connection with the proposed Phase IA launch, ULA asserts it is unable to differentiate such costs sufficiently in order to submit a compliant proposal. If true, this would call into question the cost-reasonableness determinations that the Air Force has conducted to date in connection with its reimbursements to ULA. It would also suggest that ULA will not be able to compete for *any* future launch that would require an "apples-to-apples" comparison between the highly-subsidized incumbent and unsubsidized new entrants.

Given ULA's assertion, I ask that you provide me with an assessment of ULA's assertion that it does not have the requisite business systems needed to provide a compliant proposal, as well as an opinion of whether the DoD can conduct the needed "apples-to-apples" comparison in connection with the GPS III launch without the cost accounting system that ULA says it needs to provide a compliant proposal. In addition, given the implications of ULA's assertion for the Air Force's ability to ensure that it has been paying, and will continue to pay, only fair and reasonable costs for ULA launches under the EELV program, I ask that the DoD also audit ULA's business systems—sufficient to ensure that it will be able to meet its contractual accounting requirements—and provide the results of that audit to the Senate Armed Services Committee prior to the obligation or expenditure of any additional ELC funds.

I also find ULA's claim regarding the unavailability of Atlas engines, which it insists is necessitated by the *National Defense Authorization Act for Fiscal Year 2015* and its restrictions on the use of Russian-made RD-180 rocket engines for the EELV program, especially dubious. While that law restricted the use of the RD-180 for EELV launches, the Air Force recently concluded, in declining ULA's request for a waiver from those restrictions under that law's national security exception, that no immediate action is required to address the future risk of having only one source of space launch services. This suggests that the basis for ULA's decision not to compete for the Phase IA launch was manufactured since its waiver request just recently.

Indeed, notwithstanding those restrictions, the FY 2016 NDAA recognized that a small number of Russian engines could be needed to ensure a near-term competitive environment. That includes five engines that ULA currently has in its possession, which are not limited by the sanctions, since they were fully paid for prior to the Russian invasion of Crimea. Instead of setting those engines aside for national security launches, ULA rushed to assign them to non-national security launches that are unrestricted in their use of Russian engines.

ULA's use of these tactics is unacceptable. It artificially created a need for relief from legislative restrictions on its ability to continue using RD-180—relief that, with the DoD's active assistance, ULA's is actively seeking in the fiscal year 2016 omnibus appropriations bill that is being developed now in the Congress. Put simply, there was no compelling reason to re-purpose

DoD engines other than to attempt to compel Congress to award the Russian military-industrial base by easing sanctions targeted at Vladimir Putin and his cronies.

I feel strongly that these tactics are inappropriate and intended to support an effort in the Congress to subvert the authorization process, which has fully considered and addressed this matter in an open and transparent manner and pursuant to Regular Order. With this in mind, I ask you to explain, with reference to source contractual documents, when ULA first began assigning rockets to specific launches and when it first started to reassign launches to prevent the use of RD-180s that were originally available for competitive launches. Furthermore, I ask you to determine jointly with the Administrator of the National Aeronautics and Space Administration (NASA), and notify the committee of that determination, whether ULA's reassigning those engines was early-to-need and if ULA could have procured other engines in time to meet actual launch dates. Given these actions and ULA's decision not to compete for a Phase 1A launch, the Armed Services Committee will need to assess the establishment of an unrestricted prohibition of the use of Russian rocket engines.

Please provide the information requested above by Monday, December 21, 2015. If your staff has any questions about this letter, they can reach Professional Staff Member Daniel Lerner, at (202) 224-9349. Thank you for timely assistance in the Committee's continuing deliberations regarding this serious matter.

Sincerely,

John McCain

John McCain
Chairman