

United States Senate

May 6, 2014

VIA U.S. MAIL & EMAIL (JEFFREY.A.BENNETT26.MIL@MAIL.MIL)

The Honorable Charles Hagel
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Secretary Hagel:

I write to raise serious concerns about recent developments in connection with rocket engines supplied by a Russian state-owned corporation to the Air Force's Evolved Expendable Launch Vehicle (EELV) program. As you know, a federal court recently issued a preliminary injunction to prevent the EELV program's incumbent prime contractor, United Launch Alliance (ULA), from acquiring rocket engines from the Russian state-owned corporation NPO Energomash, which has served as a supplier of engines for the EELV program.

In issuing that preliminary injunction, the Court of Federal Claims ruled that Executive Order 13661, which declares in part that "[a]ll property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person (including any foreign branch) of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in", and subsequent trade restrictions put in place by the executive branch, blocked the transfer of "any high technology defense articles or services," including the Russian RD-180 engines used in ULA's EELV rockets.

With Executive Order 13661, the President's sanctions targeted a handful of individuals and companies, including Deputy Prime Minister and head of the Russian defense and space industry, Dmitry Rogozin. The court found that, given Rogozin's control over the company that supplies ULA with rocket engines, ULA's engine purchases from that company likely contravene this executive order.

The Department of Defense (DOD), of course, knew or should have known that Rogozin controlled the state-owned corporation that manufactures and supplies the RD-180 rocket engine to the EELV program. After Executive Order 13661 was issued, it should have been apparent to the DOD that the President's sanctions would apply to ULA's purchase of RD-180 rocket engines. With this in mind, I am greatly concerned that it took legal action by a potential competitor in the EELV program—a private company—to ensure the EELV program's compliance with the President's sanctions against select Russian individuals and organizations. Why the DOD did not do so in this case adds to my concerns that served as the basis of my April

25, 2014, request to the DOD's Inspector General to review recent developments in the EELV program.

In addition, ULA has reportedly attempted to accelerate the delivery of rocket engines from NPO Energomash in advance of adoption of future sanctions against Russian companies. Trying to obtain as many Russian engines as possible ahead of sanctions would clearly undermine the spirit of the sanctions and limit the effectiveness of future sanctions on Russia. Even more troubling, accelerating delivery of those engines would likely incur increased costs—costs that could ultimately be passed on to the taxpayer.

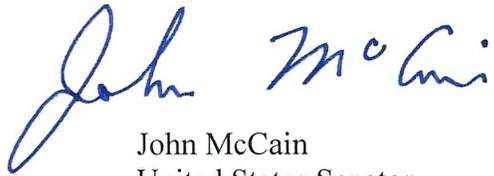
With the foregoing in mind, please provide answers to the following questions by no later than May 19, 2014:

1. Why did the DOD not block the transfer of Russian-manufactured rocket engines, referred to above, in compliance with Executive Order 13661 and other relevant authorities before the preliminary injunction was issued?
2. Will costs associated with the accelerated deliveries, referred to above, be reimbursable to ULA and, therefore, borne by US taxpayers? If not, given the limited visibility of ULA's cost and pricing, which the Government Accountability Office (GAO) has found, how will the DOD ensure that these costs are in fact not ultimately borne by the taxpayer?
3. When was the DOD first notified of the intent by ULA or any subsidiary of ULA to accelerate the delivery of rocket engines from NPO Energomash?
4. What analysis, if any, did the DOD conduct to determine what cost impact such accelerated deliveries may have on the EELV program?
5. Did the DOD express any concerns to ULA or its subsidiaries about the possibility of increased costs because of the expedited delivery schedule or that such costs may be borne by taxpayers as reimbursable costs? If not, why not?
6. Did ULA in fact succeed in accelerating delivery of engines from Russia? If so, when? What are the implications of ULA's actions on the effectiveness of sanctions imposed under Executive Order 13661 and other relevant authorities and on the ability of the President to take further action to deter/penalize Russian aggression against its neighbors?
7. What will the cost impact of those accelerated deliveries be on the EELV program?
8. Based on its current inventory and in light of this temporary injunction, are ULA or its subsidiaries still able to fulfill the contract for 36 rocket cores ULA signed in December of 2013?

9. Given the DOD's not ensuring ULA's, and therefore the EELV program's, compliance with Executive Order 13661 and other relevant authorities before the preliminary injunction was issued, please explain what processes and procedures the DOD has in place to ensure that all of its efforts to procure products and services in fact comply with Executive Order 13661 and other such directives issued in the future.

Thank you for your attention to this important matter. If you have any questions or concerns, please have your staff contact Jeremy Hayes, my Military Legislative Assistant, at 202/224-7129.

Sincerely,

A handwritten signature in blue ink that reads "John McCain". The signature is written in a cursive style with a large, looping "J" and "M".

John McCain
United States Senator