

Abstract: This paper examines the award 29 February 2008 by the United States Air Force (USAF) of the initial phase of a \$35-40 billion contract to build 179 aerial refueling tankers to the team of Northrop Grumman & EADS instead of Boeing. The decision ignited a political controversy important not only in the United States during a crucial election year, but also having significant transatlantic dimensions. Predictably, Senators and Representatives of states and districts in which Boeing has major facilities quickly denounced the deal as misguided and even unpatriotic, while those whose constituencies stood to gain from a Northrop Grumman win praised the decision as fair and responsible. Boeing's challenge of the decision was substantially upheld by the GAO, and the status of the contract remains in limbo. I argue that, at its core the ongoing debate concerns the very purpose of defense procurement policy—whether a government's purchase of military equipment should merely provide the most effective and efficient war-making capability no matter who the supplier, or instead be primarily concerned with the overall health of the industrial base and national economy. As the paper discusses, these issues acquire an even greater salience when the companies involved in the disputed bidding process are the very same actors (EADS/Airbus v Boeing) in the duopolistic and intensively competitive global market for large commercial aircraft, and currently embroiled in a seemingly never-ending dispute between the US and EU in the WTO over LCA subsidies. Yet, despite the often shrill "American v European" tone of the debate, the actors themselves and their industrial teams defy such simplistic categorizations, as both occupy key positions within extensive webs of transatlantic and even international contracting relationships.

The Decision

On Friday 29 February 2008, officials of the United States Air Force (USAF) announced their decision to procure aerial refueling aircraft from Northrop Grumman.¹ The award was characterized as "a stunning upset" because the \$35-40 billion contract to eventually build 179 planes effectively selected a foreign aircraft to replace the fleet of KC-135 tankers built (and since maintained) by Boeing² beginning in the late 1950s.³ As noted in a leading trade publication: "The Pentagon's competition worth up to \$35 billion for the new KC-45 refueling tanker was Boeing's to lose, and it lost big."⁴

¹ DOD. "News Transcript. DoD News Briefing with Secretary of the Air Force Michael Wynne, Gen. Duncan McNabb, Sue Payton, and Gen. Arthur Lichte at the Pentagon Briefing Room, Arlington, Va." *Office of the Assistant Secretary of Defense (Public Affairs)*. 29 February 2008. <http://www.defenselink.mil/transcripts/transcript.aspx?transcriptid=4163>. For an effective summary of the competition and decision, also see "Airbus Tankers for the US Air Force." *Defense Update*. 29 February 2008. http://www.defense-update.com/newscast/0208/news/news_290208_kc45a.htm

² Boeing website. <http://www.boeing.com/>

³ Leslie Wayne. "U.S.—European Teams Beats Out Boeing on Big Contract." *New York Times*. 1 March 2008. http://www.nytimes.com/2008/03/01/business/01tanker.html?_r=2&hp&oref=slogin&oref=slogin

⁴ Amy Butler, David A. Fulghum and Robert Wall. "Northrop/EADS Clinches U.S. Refueler Deal." *Aviation Week*. 29 February 2008. http://www.aviationweek.com/aw/generic/story_generic.jsp?channel=awst&id=news/aw03038p1.xml

Boeing's entrant—a modification of the 767 LCA—was so widely expected to win the bid that its executives, workers and supporters in Congress were left dumbfounded by the announcement.⁵ Northrop Grumman's main partner in the competition is the European Aeronautics Defense and Space Company (EADS)⁶, the parent company of Airbus Industrie (AI)⁷, which offered a version of its A330 airliner in the contract bid. So the US tanker competition involved the same firms that are such bitter rivals in the global competition to build and sell large commercial aircraft (LCA), and thus would necessarily have important implications for their overall financial and industrial viability.

Despite the nearly universal shock it caused even among the most seasoned observers⁸, however, the decision was only one more wrenching turn in a saga more akin to a novel of political intrigue and corporate scandal than a staid procurement process. As described more fully below, Boeing's efforts to avoid the very sort of head-to-head competition that led to its shocking loss also had led to Congressional inquiries and criminal investigations that culminated in jail sentences for the company's CFO and a DOD procurement officer, and contributed directly to the eventual resignations of Boeing's CEO and the Secretary of the Air Force. And given the leading role of Senator McCain in exposing that corruption, the controversy might well be pivotal in the presidential election campaign, especially in states having a lot to gain or lose from disposition of the contract.⁹

Given the size of the stakes for all involved, it should come as no surprise that the story is still far from over. Boeing's formal challenge of the USAF decision was upheld in June 2008 by the Government Accountability Office (GAO),¹⁰ while the company's supporters in Congress have launched a full-scale effort to undo what they regard as a perverse

⁵ New York Times reporter Leslie Wayne recounts: "Representative Norm Dicks, a member of the defense subcommittee of the House Appropriations Committee and a Democrat from Washington State, said he was attending an anticipated victory party at Boeing's offices in Washington when the mood suddenly darkened. Mr. Dicks added: "Here we are in the middle of a recession, and we give this to Airbus? That is not going to go down well." Leslie Wayne. U.S.—European Teams Beats Out Boeing on Big Contract." *New York Times*. 1 March 2008. http://www.nytimes.com/2008/03/01/business/01tanker.html?_r=2&hp&oref=slogin&oref=slogin

⁶ EADS website. http://www.eads.com/1024/en/Trailer_EADS.html

⁷ Airbus Industrie website. <http://www.airbus.com/en/>

⁸ For example see Richard Abouafia "Dear Fellow Shock Victims (Commentary on the KC-X Tanker Deal)." *Free Republic*. 13 March 2008. <http://www.freerepublic.com/focus/f-chat/1985755/posts>

⁹ Matthew Daly. "Angry Boeing Supporters Target McCain." *Associated Press*. 8 March 2008. <http://apnews.myway.com/article/20080308/D8V9AE100.html>

¹⁰ Judith Crown and Keith Epstein. "Boeing Files Tanker Protest." *Business Week*. 11 March 2008. http://www.businessweek.com/bwdaily/dnflash/content/mar2008/db20080311_092864.htm?campaign_id=rss_topStories

and un-American contract award by the DOD. Not to be outdone, Northrop's supporters claim that their entrant won in a fair contest, and that the contract will bring jobs to American workers and stimulate innovation in regions of the country such as Mobile, Alabama that are no less deserving than Boeing's enclaves in Washington State and Kansas.¹¹

History of the KC-135 Program¹²

KC-135 aircraft provide a capability crucial to the core mission of the USAF, the projection of American air power worldwide.¹³ Their main purpose is to provide aerial refueling for fighter and attack aircraft of the USAF, Navy and Marine Corps using a combination of "flying boom and "hose and drogue" technologies.¹⁴ Currently, over 500 KC-135s are operated by the USAF Air Mobility Command (AMC), and by the Air Force Reserve and the Air National Guard. In addition to their fuel payload (maximum 200,000 lbs), KC-135s can carry both cargo (maximum 83,000 lbs.) and passengers (maximum 35-40). Aircraft range varies greatly according to fuel load and mission type. Other roles for the aircraft include medical evacuation, reconnaissance and use as a "flying command post". Depending on the exact nature of the mission, a typical crew is between three and five in number. Initially conceived in the context of the Cold War of constant preparedness for large-scale, superpower conflict, the venerable fleet has continued to demonstrate its effectiveness in the post- Cold War era and even in the conflicts of the 21st century.

Not only has the KC-135 and its capabilities been central to the mission of the USAF, the aircraft was also crucial to the success of Boeing as both a defense contractor and as a designer and builder of large commercial aircraft. First offered to the newest of the US military services in early 1950s, the provision of the KC-135 to the USAF was one element in Boeing's two-pronged strategy to apply the emerging jet-propulsion technology simultaneously in both the military and civilian realms of powered flight. Both the KC-135 tanker and 707 airliner were derivatives of the Model 367-80 (known as the "Dash 80" within the company), which was first produced in prototype in 1954.¹⁵

¹¹ John M. Donnelly. "Lawmakers Line Up For Tanker Battle." *CQ Politics*. 25 April 2008. <http://www.cqpolitics.com/wmspace.cfm?parm1=5&docID=news-000002711873>

¹² The definitive book on the KC-135 aircraft and program is Robert S Hopkins, III. *Boeing KC-135 Stratotanker*. Aerofax. Midland Publishing Co., 1997. It is both comprehensive in scope and meticulous in detail, and includes scores of photographs and exhaustive appendices relating to all aspects of the Stratotanker's production, deployment and operation.

¹³ Air Force Link. "Factsheets: KC-135 Stratotanker." *Air Mobility Command*. April 2008. <http://www.af.mil/factsheets/factsheet.asp?id=110>

¹⁴ An effective overview of refueling capabilities and operations can be found in Christopher Bolkcom. "Air Force Aerial Refueling Methods: Flying Boom Versus Hose-and-Drogue." *CRS Report for Congress*. 5 June 2006. <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-9722:1>

¹⁵ A brief history of the 367-80, KC-135 and 707 can be found in *Deep Stall: The Turbulent Story of Boeing Commercial Airplanes*, Philip K. Lawrence and David W. Thornton, Ashgate, 2005. See Chapter 2, "Boeing and the Cold War: From the Jet Bomber to the Civil Transport", especially pp.

In 1955, the USAF chose the Boeing plane over its Lockheed competitor, and received delivery of the first KC-135 in June 1957 and the last in 1965. Boeing was able to apply many engineering and production lessons learned in the KC-135 program to the 707, which was in a tough fight with de Havilland, Douglas and Convair to define and supply the market for commercial jets. These synergies provided substantial economies of scope and scale and accelerated progress along the learning curve just as the reliable flow of funds from the KC-135 program reduced the financial risks of the 707. By the mid-1960s had supplanted its European and American rivals to become the largest selling of the first generation jets, and set Boeing on a trajectory to dominate for decades the design and marketing of large commercial aircraft.¹⁶

Since their initial deployment, the original KC-135A models have undergone substantial upgrades, most notably replacement of the original Pratt & Whitney (P&W) J-57 turbojet engines with quieter and more fuel-efficient P&W JT3D turbofan versions (E models), or with CFM-56 turbofans produced by CFM International (R models). Other important modifications include replacement of the "skin" surface beneath the wings¹⁷, and enhancement of the avionics and navigation systems under the Pacer CRAG (Compass, Radar and Global positioning system) and GATM (Global Air Traffic Management) programs.¹⁸

How Not to Replace the KC-135: The Leasing Deal and Scandal

Although these continual and substantial upgrades had kept the KC-135s operating effectively in the post-Cold war conflicts, in the mid-1990s the USAF, DOD and the Congress finally began to give serious consideration to the eventual replacement of a fleet whose average age was approaching 40 years.

The KC-135 tankers, many of which are 40 years old, are the oldest aircraft the services operate and are becoming more expensive to operate (the cost per KC-135 flying hour is projected to increase from \$8,662 in 1996 to \$10,761 in 2001). The military has little or no experience operating and maintaining aircraft of this age, and there are no commercial airline fleets of a comparable age. Consequently, the Air Force only recently began to collect data to enable it to predict how long or effectively these aircraft can continue to operate.¹⁹

32-37. Also see the section of the Boeing website devoted to the history of the KC-135. <http://www.boeing.com/history/boeing/kc135.html>

¹⁶ See Lawrence and Thornton Chapter 2, esp. pp. 40-44.

¹⁷ See the section of the Boeing website devoted to the KC-135 and its variants. <http://www.boeing.com/defense-space/military/kc135-strat/index.html>

¹⁸ Air Force Technology. "KC-135 Stratotanker Air-to-Air Refueling Aircraft, USA." <http://www.airforce-technology.com/projects/kc135/>

¹⁹ GAO. "U.S. Combat Airpower: Aging Refueling Aircraft are Costly to Maintain and Operate." *GAO/NSIAD 96-160*. August 1996. <http://www.gao.gov/archive/1996/ns96160.pdf>. The report contains a great deal of useful information on the KC-135 fleet and discusses in detail the

Despite these concerns, even at the turn of the century the USAF did not give the tanker fleet high priority in its assessment of immediate needs, arguing instead that maintenance of the existing fleet was still feasible, and that major changes could wait. "At that time, the Air Force position on tanker modernization was to conduct an analysis of alternatives (AOA) to determine the optimal replacement option for KC-135s. Recapitalization would begin in the 2012 time frame to meet the KC-135 2040 retirement."²⁰

However, this professed lack of urgency was belied by the actual behavior of USAF acquisition officials, who in 2001 began actively exploring the possibility of acquiring KC-135 replacement aircraft outside the typical procurement process.²¹ Pursuing an idea initially floated by Boeing in February 2001 to convert 36 of its 767 LCA to tankers for sale to the USAF, Darleen Druyan, a senior USAF procurement officer met with Boeing executives at the Pentagon in September 2001 to discuss instead a leasing arrangement for 100 aircraft.

As eventually revealed in subsequent Congressional and criminal investigations, the scheme had several related purposes. The first of these was to permit the USAF to initiate the KC-135 replacement process without having a full-blown, lengthy competition among possible suppliers. Closely connected to this concern were the budgetary constraints entailed in a full-scale procurement program; leasing would require relatively modest outlays in the short term and allow the USAF to begin taking delivery and making use of the planes relatively quickly, even if it would not own them outright. For its part, Boeing would gain the obvious benefit of maintaining a functioning production line for an airplane—the 767 LCA—whose fortunes and future prospects at the time were decidedly unpromising. Also, under the deal Boeing would be guaranteed a profit of 15% for each airplane, well above its margin on commercial deals. Finally, through the arrangement the company would likely become the de facto supplier of the KC-135 replacement aircraft by default, since no other aircraft would have been evaluated or tested.

On the legislative side, under the practiced hand of Senator Ted Stevens (Republican of Alaska) in December 2001 language authorizing (but not funding) the 767 leasing arrangement was inserted by the conference committee reconciling the FY 2002 defense appropriations bill, which was subsequently approved the entire Congress. However, some in the Congress, especially Senator John McCain (Republican of Arizona) questioned the deal on both financial and ethical grounds, saying the arrangement amounted to a tax-payer funded bailout of Boeing and an end run around the

increasing cost and difficulty of maintaining it in the subsequent years.

²⁰ Christopher Bolkcom. "Air Force Aerial Refueling." *CRS Report for Congress*. 29 August 2006. <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-9865:1>

²¹ R. Jeffrey Smith and Renae Merle. "Rules Circumvented on Huge Boeing Defense Contract." *Washington Post*. 27 October 2003. <http://www.washingtonpost.com/ac2/wp-dyn/A21584-2003Oct26?language=printer>

established procurement process. In response to these criticisms, in March 2002 the USAF issued a formal RFI regarding the lease, and allowed EADS to submit data on the Airbus A330 derivative. However, within only weeks the USAF had concluded that only Boeing could meet the requirements as defined, and that negotiations to finalize the terms of the leasing deal would begin.²²

But even as Boeing and the USAF were defining the contractual arrangements and pursuing Congressional support for them, relations between the two were becoming even more intimate behind the scenes. In April 2002, Druyan provided Boeing officials with proprietary details about the bid information that EADS had submitted. In an evident quid pro quo, Druyan met with Boeing officials in October 2002 in Orlando, FL to negotiate the terms of her eventual employment with the company. Two months later she resigned her position with the USAF to begin work in Boeing's Missile Defense Systems unit in January 2003.

During 2002, Druyan and other officials in the USAF—including Secretary Gen. James G. Roche—had been busy coordinating a campaign to enlist support for the deal in the media and even from the White House. This strategy was intended to deflect and blunt critics within the government—including the Office of Management and Budget (OMB) and the Congressional Budget Office (CBO), and the GAO²³--who not only challenged pricing of the lease as too high, but questioned the USAF's rationale for proceeding so urgently with the deal.²⁴ Private "watchdog" groups sought to bring public and media attention and sharply criticized a deal they saw as Congress bilking the taxpayers for the benefit of a greedy defense contractor.²⁵

By mid-2003, the political tide had turned sharply against the lease deal, as opponents in Congress were joined by a number of government watchdog groups across the

²² Dan Cook. "Boeing Given Nod on Tanker Lease." *Military Aerospace Technology*. 1 May 2002. <http://www.military-aerospace-technology.com/article.cfm?DocID=335>. Cook quotes Senator Patty Murray, Democrat of Washington State: "This is good news for the men and women in uniform, and the men and women who build American planes. I sincerely hope that the advocates for foreign plane manufacturers will finally acknowledge that only Boeing can meet the tanker needs of the Air Force. "Further, I hope that Boeing's critics will cease their attacks on the Boeing Co. and the thousands of hard-working American men and women who build the best airplanes in the world," Murray added.

²³ GAO. "Preliminary Information on AF Tanker Leasing Issues." Briefing for Senate Armed Services Committee. May 2002. <http://www.gao.gov/new.items/d02724r.pdf>

²⁴ Business Week provided insightful coverage of the controversy at the time. See Stan Crock et al. "Inside Boeing's Sweet Deal." *Business Week*. 7 July 2003. http://www.businessweek.com/magazine/content/03_27/b3840095.htm Stan Crock. "Five Truths About Boeing's Tanker Lease." *Business Week*. 30 June 2003. http://www.businessweek.com/bwdaily/dnflash/jun2003/nf20030630_1408_db056.htm?chan=search

²⁵ POGO. "Fill 'Er Up: Back-Door Deal for Boeing Will Leave the Taxpayer on Empty." May 2002. *Project on Government Oversight*. <http://www.pogo.org/p/contracts/co-020507-boeing.html>

ideological spectrum calling for full-scale investigations.²⁶ In early September 2003, Senate hearings received reports and heard testimony from USAF Secretary Gen. Roche, Undersecretary of Defense for Acquisition, Logistics and Technology Michael W. Wynne, officials of the government research agencies CBO, CRS and GAO, the independent think tank Institute for Defense Analyses (IDA), and private organizations such as Taxpayers for Common Sense, and the Project on Government Oversight (POGO).²⁷ The clear message from the sessions was that the USAF and Boeing had gone well outside normal procurement procedures in negotiating with unjustified haste a deal quite favorable to the company and with unnecessary cost to taxpayers. In addition, publicity associated with the scathing questioning by Senator McCain of Secretary Roche²⁸, the revelations caused Senator John Warner (R, Virginia), Chairman of the Senate Armed Services Committee to write a letter to Secretary of Defense Donald Rumsfeld stating that Warner's committee would not consider the lease deal for approval in its present form. Not only did Warner ask for additional study of the lease arrangement, but requested that the proposed deal be drastically cut back to only 25 tankers.²⁹

The DOD, the USAF, Boeing and its Congressional supporters scrambled to salvage at least a portion of the leasing deal. In early November 2003, it appeared they had been successful in getting an agreement that the USAF would lease 20 and buy 80 of the planes, a compromise that appeared to satisfy even John McCain.³⁰ However, investigation by the Pentagon's Inspector General (IG) and the US Attorney for the Eastern District of Virginia had uncovered the unethical and illegal arrangements between Druyan and Boeing's CFO Michael Sears regarding the lease, both of whom were fired from the company in November 2003.³¹ The deepening scandal proved to be

²⁶ Leslie Wayne. "Unusual Pentagon-Boeing Deal is attacked." *New York Times*. 10 June 2003. <http://query.nytimes.com/gst/fullpage.html?res=9800E7D71239F933A25755C0A9659C8B63>

²⁷ United States Senate Committee on Science, Commerce and Transportation. Full Committee Hearings. "Lease of Boeing Tankers to US Air Force." 3 September 2003. http://commerce.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing_ID=39eedf6-d490-4e00-bc96-e4fe56da1dde&Witness_ID=3c485f6f-ca5a-4228-bf24-ed9c8069506d. United States Senate. Committee on Armed Services. "To receive testimony on the proposed lease of 100 KC-767 aerial refueling tanker aircraft by the U.S. Air Force." 4 September 2003. http://armed-services.senate.gov/e_witnesslist.cfm?id=898
The list of witnesses contains links to their written statements.

²⁸ Leslie Wayne. "Senator Ridicules Boeing Lease at Hearing." *New York Times*. 4 September 2003. <http://query.nytimes.com/gst/fullpage.html?res=9805EFD91038F937A3575AC0A9659C8B63>

²⁹ Leslie Wayne. "Senators Voice Doubts on Plan to Lease Boeing Planes." *New York Times*. 5 September 2003. <http://query.nytimes.com/gst/fullpage.html?res=9E0CE6D91138F936A3575AC0A9659C8B63>

³⁰ Charles Pope. "Pentagon Finalizes Boeing Tanker Deal." *Seattle Post-Intelligencer*. 7 November 2003. http://seattlepi.nwsourc.com/business/147286_tankers07.html

³¹ George Cahlink. "Fallen Star." *Government Executive*. 15 February 2004. <http://www.govexec.com/features/0204/0204s1.htm> The article provides informative background on Druyan's long and storied career in procurement.

the last straw for the Boeing board of directors, which in December 2003 it asked for and received the resignation of the company's CEO, Phil Condit.³²

The intensity of the controversy also convinced the DOD to put the lease deal on hold³³, and to request in February 2004 a formal Analysis of Alternatives (AOA) by the USAF and evaluation of KC-135 recapitalization by the Defense Science Board (DSB).³⁴ Inquiry by the DOD Inspector General (IG) raised many concerns with the both the substance and process of the leasing arrangement.³⁵ Still, Boeing and its congressional supporters launched a public relations blitz in a last-ditch effort to resurrect the deal.³⁶ However, the DSB report released in May 2004³⁷ recommended that full AOA should be conducted, later that month RAND was chosen to conduct the large-scale study. The GAO agreed on the need for a comprehensive analysis, and cautioned against proceeding in unnecessary haste with the lease arrangement.³⁸ Indeed, late in 2004, the USAF had only begun to institute an effective means of assessing its needs in airlift and refueling,

³² Stanley Holmes. "Boeing: What Really Happened." *Business Week*. 15 December 2003.

http://www.businessweek.com/magazine/content/03_50/b3862001_mz001.htm

On the occasion of his resignation, the edition's cover story describes Condit's personal strengths and weaknesses and his troubled legacy for the company as Boeing's CEO. A very brief synopsis of the leasing scandal in the larger context of Boeing's difficulties can be found in Chapter 8 (The Crisis Deepens), pp. 137-139 of *Deep Stall: The Turbulent Story of Boeing Commercial Airplanes*. Philip K. Lawrence and David W. Thornton, Ashgate, 2005.

³³ John A. Tirpak. "Tanker Twilight Zone." *Air Force Magazine Online*. February 2004. Vol. 87, No.2. <https://www.aef.org/magazine/Feb2004/0204tanker.asp>

³⁴ Christopher Bolkcom. "Air Force Aerial Refueling." *CRS Report for Congress*. 4 May 2004. <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-7399:1>

³⁵ DOD. Office of the Inspector General. "Acquisition of the Boeing KC-767A Tanker Aircraft." Report No. D-2004-064. 29 March 2004. <http://www.dodig.osd.mil/Audit/reports/fy04/04-064.pdf>

³⁶ Alex Fryer. "Tanker-Deal backers go on offensive for Boeing." *Seattle Times*. 5 May 2004. http://seattletimes.nwsourc.com/html/business/technology/2001919911_tanker05.html

³⁷ Defense Science Board (DSB). "Task Force Report on Aerial Refueling Requirements." May 2004. <http://stinet.dtic.mil/cgi-bin/GetTRDoc?AD=ADA423583&Location=U2&doc=GetTRDoc.pdf>

³⁸ "The Air Force is embarking on a program that could cost billions of dollars to replace the existing KC-135 fleet without knowing how many or what types of replacement aircraft it needs, because it does not have a current requirements study. Consequently, the Air Force could miss opportunities to meet its refueling needs in the most cost-effective manner; it does not have a roadmap to guide it as it makes investment decisions about tanker replacement. The Air Force could begin its tanker replacement program along the lines of the lease-buy program approved by Congress last year without such a roadmap, but we believe that long-term replacement decisions for the remainder of the tanker fleet should be based on a sound, comprehensive requirements study reflecting the most up-to-date analysis possible of the future environment." GAO. "Military Aircraft: DOD Needs to Determine Its Aerial Refueling Aircraft Requirements." *GAO-04-349*. June 2004. <http://www.gao.gov/new.items/d04349.pdf>

and the newly created Fleet Viability Board had only begun the process of evaluating the KC-135 fleet.³⁹

Meanwhile, in April 2004, Darleen Druyan had pleaded guilty in federal court to granting favors to Boeing in her role as procurement official, and in October 2004 was sentenced to 9 months in federal prison, plus fines and community service.⁴⁰ Congressional interest of and requests for information on her role in the scandal had led to tension with the DOD, with Secretary Rumsfeld rejecting requests from Senators McCain and Warner for all USAF and DOD internal communications regarding the leasing deal.⁴¹ To induce DOD compliance, Senator McCain refused to hold hearings on numerous appointments and promotions of USAF and other officials, including the nomination of Roche to be Secretary of the Army. The confrontation culminated in a dramatic November 2004 Senate floor speech by Senator McCain in which he used those eventually released emails to document in great detail the chronology of events and conversations among the USAF, DOD and Boeing in their surreptitious efforts to gain approval for the leasing deal in Congress, and support for it in the public.⁴² Following these revelations, in mid-November 2004 both Secretary Roche and his second-in-command, Martin Sambur announced their resignations from the USAF.⁴³

³⁹ Adam J. Hebert. "Checking Up on Old Aircraft." *Air Force Magazine*. December 2004, Vol. 87, No. 12. <http://www.afa.org/magazine/Dec2004/1204aircraft.asp>

⁴⁰ George Cahlink. "Ex-Pentagon procurement official gets jail time." *Government Executive*. 1 October 2004. <http://www.govexec.com/dailyfed/1004/100104g1.htm>. The article contains a link to Druyan's plea agreement with the US Attorney's Office for the Eastern District of Virginia. Druyan eventually served her sentence, and was released in October 2005. For his part, in February 2005 Michael Sears was sentenced to four months in prison, paid a \$250,00 fine, and was given two years probation and 200 hours of community service. See Leslie Wayne. "Former Executive at Boeing Given Four-Month Prison Term." *New York Times*. 19 February 2005. http://www.nytimes.com/2005/02/19/business/19sears.html?_r=1&oref=slogin

⁴¹ Amy Klamper. "Senators Accuse Air Force officials of hiding Boeing probe documents." *Congress Daily*. Government Executive.com. 28 September 2004. <http://www.govexec.com/dailyfed/0904/092804cdam1.htm>

⁴² "McCain Statement on US Air Force Accountability Regarding the Boeing 767 Tanker Lease Deal." 19 November 2004. http://mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.Speeches&ContentRecord_id=C0A22919-287A-4F7B-B3CC-49B8A93CB0A5. Also see the very informative account by R. Jeffrey Smith. "Air Force Pitch for Boeing Detailed." *Washington Post*. 20 November 2004. <http://www.washingtonpost.com/wp-dyn/articles/A63815-2004Nov19.html>

⁴³ The scandal continued to pursue Roche even as he was preparing to leave the USAF, as the DOD Inspector General found him guilty of ethics violations regarding another controversy. See Department of Defense. Office of the Inspector General. "Report of Investigation. Alleged Misuse of Public Office: Dr. James G. Roche, Secretary of the Air Force." 27 January 2005. <http://www.dodig.osd.mil/fo/Foia/ERR/H04L94024201-Roche.pdf>. During his last days in the job as Assistant Secretary for Acquisition, Sambur described what he perceived as the widespread and long-term damage to the USAF from the scandal. "Elizabeth Rees. "Sambur: Acquisition Officials 'Lining up to Leave' in Tanker Inquiry Fallout." *Inside defense.com*. 12 January 2005. <http://integrator.hanscom.af.mil/2005/January/01132005-4.htm>

Still not satisfied, McCain continued to pursue the matter into 2005, even as he endured what he called "obfuscation and delay" from not only the DOD but also other parts of the executive branch in gaining access to communications among the lease deal protagonists.⁴⁴ Senate hearings in June 2005 made it clear that McCain and many of his colleagues remained very dissatisfied with and suspicious of both the civilian and military leadership within the DOD, and questioned sharply the role of the White House in the botched leasing deal.⁴⁵ The Department of Justice continued to investigate, and it wasn't until June 2006 that a deal was reached to settle Boeing's culpability in the matter.⁴⁶

The KC-X Competition: How to Get the Wrong Answer

Burned by the fallout and fearful of further Congressional inquiry and media scrutiny, the USAF proceeded with extreme caution in preparing to issue the formal request for information (RFI) that would formally launch the KC-X competition to replace the KC-135.⁴⁷ Given the degree of disarray that the scandal had created in the top ranks of the USAF leadership, and his own connection to the leasing controversy, the new Secretary Michael Wynne⁴⁸ was willing to incur significant delays to make sure that the competition was perceived as open and transparent. As some details of the massive, long-awaited, but classified RAND AOA began to emerge from the closed-door briefings of Congress, it

⁴⁴ Alicia Mundy. "McCain still stalks Boeing tanker deal." *Seattle Times*. 26 December 2004. http://seattletimes.nwsourc.com/html/politics/2002130791_mccain26m.html

⁴⁵ Mike Allen. "Details on Boeing Deal Sought." *Washington Post*. 8 June 2005. <http://www.washingtonpost.com/wp-dyn/content/article/2005/06/07/AR2005060701751.html>
DOD IG Joseph E. Schmitz and Thomas F. Gimble testified to the Senate Armed Service Committee about the conclusions of the IGs May 2005 report on the lease deal. Initially, the report was issued only in heavily redacted form, and only after Freedom of Information Act (FOIA) requests was a more complete version released a year later. See Project on Government Oversight (POGO). "Defense Inspector General Originally Hid Boeing Role in Scandal Report." 25 May 2006. <http://www.pogo.org/p/contracts/ca-060502-boeing.html>. Many in Congress and watchdog groups were angered that Schmitz had submitted his IGs report on the Boeing lease deal to the White House for editing prior to its initial release. Schmitz himself resigned as IG in September 2005 as the target of Congressional investigation, in part concerning his role in the Boeing lease scandal. Schmitz then took a job with the Prince Group, the parent company of Blackwater USA.

⁴⁶ Boeing agreed with the US Department of Justice to pay \$615 million in fines in settlement of the leasing fraud. Doug Cameron. "Boeing in Final Deal Over Procurement Scandals." *Financial Times*. 30 June 2006. http://us.ft.com/ftgateway/superpage.ft?news_id=fto063020061720214867

⁴⁷ John T. Bennett. "Air Force Wants to Speed Tanker Program." *InsideDefense.com NewsStand*. 21 January 2006. <http://www.military.com/features/0,15240,85958,00.html>

⁴⁸ Wynne's official biography can be found at *Air Force Link* <http://www.af.mil/bios/bio.asp?bioID=7919>. Prior to his confirmation as USAF Secretary in November 2005, Wynne had served in the DOD and Under Secretary for Acquisition, Technology and Logistics.

became apparent that the needs of the USAF were far from immediate, and that adequate time existed for a full-scale contest.⁴⁹ Yet even as the Pentagon worked to realign its procurement process with the political dynamics, in Congressional hearings in February 2006 the USAF and DOD leadership itself remained divided internally regarding the aircraft's basic features, and whether one aircraft could be expected to meet all anticipated needs.⁵⁰ Formally released in March 2006, the RAND study⁵¹ did little to resolve this question, concluding only that the best option was to convert some existing but unspecified LCA to tanker use, while allowing for the possibility of complementary cargo and/or passenger capabilities.⁵²

This ambiguity was reflected in the RFI issued 25 April 2006, which separated the capabilities criteria into two areas: (A) tanker recapitalization and (B) complementary tanker support.⁵³ But while the RFI represented the formal initiation of the new KC-X procurement process, a clause in the solicitation near the end of Part A again raised questions of whether a genuine competition was intended by the USAF. It required that in their proposals entrants must address "Application of retaliatory duties that may be imposed pursuant to the aircraft litigation at the World Trade Organization."⁵⁴

The clause was in direct reference to a long-running and ongoing dispute between the United States and EU regarding the legality of launch aid and other financial benefits given to AI by European national governments in support of LCA projects, including AI's A330.⁵⁵ Northrop Grumman /EADS and its supporters in Congress objected, but were only partly successful in having the language changed in the draft Request for Proposals (RFP) in September 2006, as it asked the potential entrants only their opinion of

⁴⁹ Megan Scully. "Study Sees No Need to Replace Tankers." *Congress Daily*. 27 January 2006. http://www.nationaljournal.com/congressdaily/am_20060127_2.php?related=true&story1=am_20060127_2&story2=nj_20060114_20&story3=nj_20080315_5

⁵⁰ John T. Bennett. "Tanker Debate: Large, Medium, or Both?" *InsideDefense.com NewsStand*. 8 March 2006. <http://www.military.com/features/0,15240,90236,00.html>

⁵¹ Michael Kennedy et.al. "Analysis of Alternatives (AoA) for KC-135 Recapitalization, Executive Summary." *RAND Corporation. Project Air Force*. 2006. http://www.rand.org/pubs/monographs/2006/RAND_MG495.pdf

⁵² John A. Tirpak. "Charting a Course for Tankers." *Air Force Magazine Online*. Vol. 89, No. 6, June 2006. <http://www.afa.org/magazine/June2006/0606tankers.asp>

⁵³ "Solicitation: KC-135 Tanker Replacement Program (KC-X) and Complementary Capabilities." USAF. *Federal Business Opportunities*. Solicitation Number: KC-135-RTA-KC-X-RFI. https://www.fbo.gov/?s=opportunity&mode=form&id=287257967787022cf9c1a8f28fc01adc&tab=core&_cview=0

⁵⁴ KC-X RFI solicitation (op. cit).

⁵⁵ Full discussion of this dimension is well beyond the scope of this paper. A brief summary can be found in Lawrence and Thornton *Deep Stall*, Chapter 7 "Interlude: The Airbus vs. Boeing TransAtlantic Trade and Subsidy Battle."

whether the subsidy issue should remain a consideration.⁵⁶ Still concerned about both the intent and possible effects of any subsidy-related wording in the RFP, Senator McCain wrote a letter in early December 2006 to the incoming Secretary of Defense Robert Gates in which McCain expressed his concern that the provision would undercut any possibility of actual competition.⁵⁷ His concerns were addressed by Gates, the USAF and the DOD as the formal RFP issued 30 January 2007⁵⁸ contained no reference to subsidies or the related dispute. At the time and subsequently, the removal of any subsidy-related requirements was seen as a substantial victory for the Northrop Grumman/EADS team, allowing consideration of the AI entrant on equal footing alongside the Boeing candidate. The stage was set for a full-fledged competition between the world's two premier aircraft manufacturers for one of the most significant defense contracts in decades.⁵⁹

The Entrants: Aircraft, Industrial Teams and Political Allies.

Within two weeks of the posting of the formal RFP, both Northrop Grumman and Boeing had announced their intention to bid for the KC-X to replace 179 of the aging KC-135 fleet, work estimated at \$35-40 billion.⁶⁰

Northrop Grumman's initial uncertainty about submitting a formal bid was overcome by language in the RFP indicating the USAF's explicit intention to consider in its evaluation cargo and passenger capacity in addition refueling capability.⁶¹ Therefore, Northrop

⁵⁶ James Wallace. "Air Force backs off subsidy issue." *Seattle Post-Intelligencer*. 26 September 2006. http://seattlepi.nwsourc.com/business/286452_tankers26.html. Wallace also published a series of investigative articles on the competition under the title "Special Report: Landing the Tanker." 1-2 June 2006. <http://seattlepi.nwsourc.com/boeing/tanker/>. Wallace also maintains an extensive blog on all issues relating to aerospace, especially Boeing and the tanker controversy.

⁵⁷ Amy Butler. "McCain Calls on Gates to Review Tanker Buy." *Aviation Week*. 6 December 2006. http://www.aviationweek.com/aw/generic/story_channel.jsp?channel=defense&id=news/MCC12066.xml

⁵⁸ "Air Force Posts KC-X Requests For Proposals." *Air Force Link*. 30 January 2007. <http://www.af.mil/news/story.asp?storyID=123039273>

⁵⁹ Loren B. Thompson. "Deal of the Century: Is Anyone Paying Attention?" *The Lexington Institute*. 11 January 2007. <http://lexingtoninstitute.org/1039.shtml>

⁶⁰ Doug Cameron. "Northrop Grumman to Bid for Tanker Deal." *Financial Times*. 8 February 2007. http://us.ft.com/ftgateway/superpage.ft?news_id=fto020820071136113911.
Doug Cameron. "Boeing unveils pitch for USAF tanker contract." *Financial Times*. 12 February 2007. http://us.ft.com/ftgateway/superpage.ft?news_id=fto021220071706464410

⁶¹ The importance of these features in connection to US military doctrine and operational needs was documented in a White Paper published soon afterward by the Air Mobility Command. Air Mobility Command. "KC-X: The Next Mobility Platform, the Need for a Flexible Tanker." *Headquarters Air Mobility Command White Paper*. 28 February 2007. <http://www.amc.af.mil/shared/media/document/AFD-070227-044.pdf>. However, the GAO concluded that those requirements had been included by the USAF without adequate empirical justification. GAO. "Defense Acquisitions: Air Force Decision to Include a Passenger and Cargo

Grumman offered a larger aircraft that not only could carry more fuel, but also transport more troops and material, incorporating an airlift component alongside the refueling mission.⁶² Having decided to pursue the KC-X contract with EADS as its principal subcontractor, Northrop Grumman assembled a group of prominent European and American suppliers of aircraft components and systems.⁶³ In addition to EADS as the provider of the aircraft itself and the aerial refueling boom, Northrop selected General Electric (GE) to supply the CF6-80E1 engine, Sargent Fletcher for the air refueling pods system, and Parker Aerospace for the air refueling receptacle. Smiths Aerospace was chosen for the flight management system, Honeywell for avionics and other systems, and Telephonics Corporation to provide secure intercommunications. AAR Cargo Loading Systems was selected to provide the cargo pallets and loading capability. Northrop Grumman acts as prime contractor and systems integrator.⁶⁴

The team submitted its formal proposal to the USAF 10 April 2007, two days ahead of the official deadline.⁶⁵ The Northrop Grumman entrant, dubbed the KC-30, is a version of the Airbus Multi-Role Transport Tanker (MRTT), itself a derivative of the Airbus A330-200 LCA.⁶⁶ The aircraft components imported from Europe would be assembled at an

Capability in Its Replacement Refueling Aircraft Was Made without Required Analyses." 6 March 2007. <http://www.gao.gov/new.items/d07367r.pdf>

⁶² Summary descriptions and renderings of the KC-767KC-30 and KC-30 can be found in Appendix E and F respectively of William Knight and Christopher Bolkcom. "Air Force Air Refueling: The KC-X Acquisition Program." 4 April 2008. <http://www.fas.org/sgp/crs/weapons/RL34398.pdf>. A brief yet instructive discussion of the contending entrants can be found in "Boeing vs. Airbus: This time it's war." *Economist*. 31 January 2008. http://www.economist.com/business/displaystory.cfm?story_id=10608706

⁶³ Air-Attack. "Northrop unveils team for \$40 billion AF tanker contract." 29 March 2007. http://www.air-attack.com/news/news_article/2428/Northrop-unveils-team-for-40-billion-AF-tanker-contract.html

⁶⁴ Northrop Grumman. "KC-45 Tanker: Total Air Mobility." <http://www.northropgrumman.com/kc45/>

The entire website is devoted to the KC-45, which became the designation for the company's entrant once it had been selected as the winner in the KC-X competition. Although primarily promotional in nature the website contains much useful information (pamphlets, photos, videos) on the aircraft and the industrial team. For example, on the front page is a map labeled "American Suppliers", which depicts the locations of firms supplying components, parts or services in the design and construction of the aircraft. That map is accompanied by a list of the 230 firms in 49 states that the company claims as involved in the program, along with facts and figures documenting their presence and impact in each state.

⁶⁵ Air-Attack. "Northrop Grumman Submits KC-X Tanker Proposal to U.S. Air Force Early." 10 April 2007. http://www.air-attack.com/news/news_article/2443/Northrop-Grumman-Submits-KC-X-Tanker-Proposal-to-US-Air-Force-Early.html

⁶⁶ In addition to brief written description, the MRTT section of the EADS website includes an un-narrated video depicting the aircraft's various configurations and capabilities. <http://www.eads.com/1024/en/businet/miltrair/derivatives/A330-MRTT.html>. An earlier version of the MRTT based on the Airbus A310 is in service with the German and Canadian air forces, but is no longer in production. See *Airforce Technology*. "A310 MRTT Multi-Role Tanker Transport,

EADS/Airbus facility that would be built at the Brookley Complex in Mobile, Alabama.⁶⁷ EADS will also oversee flight testing and airworthiness certification. The plane would then be converted to its tanker and transport application at an adjoining secure Northrop Grumman site, where the military systems would be installed.

For its part, Boeing opted for an entrant whose characteristics matched closely the aircraft it was intended to replace, arguing that a newer version of its older tanker could easily be integrated into the existing USAF system of aircraft and bases.⁶⁸ In light of the cargo and passenger factors Boeing had considered putting forward a version of its larger 777, but in the end elected to stay with the 767 variant.⁶⁹ The industrial team includes some of the same firms on the opposing side (Smiths, Honeywell), but selects Pratt & Whitney to provide the PW4062 engines, and Rockwell Collins for avionics and communications.⁷⁰ Despite having already sold a freighter/tanker version of the 767 to both the Italian and Japanese governments, Boeing elected to incorporate elements from its other commercial aircraft lines into the KC-767 package submitted in the KC-X competition.⁷¹ Like its rival, the KC-767 would first be assembled as a commercial aircraft at Boeing's Everett, WA facility, and then converted to military use at its plant in Wichita, KS.

According to the Congressional Research Service (CRS), these decisions by the companies evidently represented differing and indeed contending responses to criteria that were genuinely reflective of the USAF/DOD stated needs, and not meant to favor one entrant over the other.⁷² An audit conducted by the DOD Inspector General (IG) at

Europe." <http://www.airforce-technology.com/projects/mrttp/>

⁶⁷ See the official Brookley Complex website for diagrams, maps history and more about the facility. <http://www.brookleycomplex.com/>

⁶⁸ See Boeing's website "KC-767 Advanced Tanker." http://www.boeing.com/ids/globaltanker/usaf/KC_767/index.html.

⁶⁹ See Airforce Technology. "KC-767 Tanker Transport Aircraft, USA." <http://www.airforce-technology.com/projects/kc767/>.

⁷⁰ "Boeing KC-767 Advanced Tanker, Global Tanker Team." <http://www.boeing.com/ids/globaltanker/program/index.html>

⁷¹ In a parenthetical note in a posting of 11 December 2007 comparing the two entrants in relation to the USAF criteria, Scott Hamilton observes: "(It should be noted that the KC-767 proposed for the USAF is not the same aircraft developed for the Italians and Japanese air forces. The USAF KC-767 Advanced Tanker uses the heavier wings of the 767-300, flaps from the 767-400 and the cockpit technology of the 777, among other things.)" http://www.leeham.net/filelib/ScottsColumn_3_121107.pdf. The eclectic nature of the aircraft led some to depict in a cartoon as a "frankentanker", cobbled together from disparate parts. See Rami Grunbaum. "Opponents call Boeing's plane "Frankentanker". *Seattle Times*. 27 January 2008. http://seattletimes.nwsourc.com/html/sundaybuzz/2004147565_sundaybuzz27.html

⁷² In written testimony to a House committee, Christopher Bolkcom of the Congressional Research Service (CRS) stated: "After an initial review, CRS found that *as DoD defines its tanker*

the request of Senator McCain and published in May 2007 also concluded that the USAF had corrected the deficiencies so evident in the leasing deal, and established a genuinely competitive procurement process based on clearly established capabilities requirements.⁷³

Once the teams had submitted their proposals, the USAF began an extensive and complex process of evaluation. According to the officials involved, the process was thoroughly documented and vetted by not only procurement specialists but also a legal team, and incorporated regular and structured dialog with the contractors.⁷⁴ Still, in anticipation that the eventual decision might be challenged and the procurement process stalled, USAF officials had convinced congressional appropriators to create in 2004 a Tanker Replacement Transfer Fund, which eventually grew to \$240 million.⁷⁵

Early on in the competition, news ominous for Boeing came from the annual Paris Air Show in June 2007, and gave the Northrop Grumman team some reason for optimism in the KC-X competition. In a head-to-head contest, the Saudi government had chosen Airbus over Boeing to supply up to four refueling tankers.

For Boeing, the Saudi deal to purchase modified Airbus A330s would represent another setback for a tanker program that had been a sure bet until a lease scandal engulfed and tarnished it four years ago. Since the scandal, the Chicago aerospace goliath has yet to win an open competition in pitting its KC-767 Global Tanker against EADS's newer A330 version. And although Boeing is working assiduously to improve its image among key political players in Washington, D.C., it appears to be making some strategic missteps that could give Northrop and EADS the advantage in winning the most lucrative Pentagon defense contract of the foreseeable future.⁷⁶

requirement, there appears to be nothing obvious in the KC-X RFP or the supporting System Requirements Document (SRD) that would inherently bias the contract award in favor of any platform that could be offered by the competitors."

Christopher Bolkcom. "Statement Before the House Armed Services Committee, Air and Land Forces Subcommittee." *Hearing on Air Force and Army Airlift and Aerial Re-Fueling Fixed-Wing Aircraft Programs*. 7 March 2007.

http://armedservices.house.gov/pdfs/ALTankers030708/Bolkcom_Testimony030707.pdf

⁷³ DOD. Office of the Inspector General. "Air Force KC-X Aerial Refueling Tanker Aircraft Program." Report No. D-2007-103. 30 May 2007.

<http://www.dodig.osd.mil/Audit/reports/FY07/07-103.pdf>. See in particular p. 5, and also Appendix D for a detailed timeline of events for the KC-X program.

⁷⁴ Air Force Link. "Air Force officials evaluating KC-X proposals." 7 May 2007.

<http://www.af.mil/news/story.asp?storyID=123052308>

⁷⁵ Bettina H. Chavanne. USAF Has Backup for KC-X Protest." *Aviation Week*. 19 February 2008.

http://www.aviationweek.com/aw/generic/story_channel.jsp?channel=defense&id=news/KCX021908.xml

⁷⁶ Stanley Holmes. *A Saudi Snub of Boeing?* *Business Week*. 18 June 2007.

http://www.businessweek.com/globalbiz/content/jun2007/gb20070618_692470.htm?chan=search

This Saudi decision followed similar ones by the governments of the United Arab Emirates (UAE), the UK and Australian Air Force in favor of the MRTT.

As the competition heated up during the Summer of 2007, complementary to the technical and industrial aspects of their submissions to the USAF, Northrop Grumman and especially Boeing sought to ramp up public and political support for their entrants.⁷⁷ Although considerations such as employment and tax revenue were not included in the selection criteria, both teams touted the purported benefits. Boeing argued for maintaining the Seattle region as the world's premier center of aeronautical design and manufacture, as well as its Wichita, Kansas locations. For its part, the Northrop Grumman team emphasized the stimulus that its selection would bring to the economy of the Mobile, Alabama region, which had been selected in June 2005 as the location for the final assembly of the KC-30.⁷⁸

Not only did these arguments play well politically in the respective locations, but served to highlight the industrial and financial importance of the contract for the continued viability of the companies themselves. Indeed, some observers see the military procurement criteria and process of the KC-X competition as only secondary to the commercial rivalry between Boeing and Airbus.⁷⁹

[h](http://www.flightglobal.com/articles/2008/01/03/220605/saudi-arabia-picks-eads-to-supply-three-airbus-a330-based-tankers.html). Finalized in January 2008, the eventual order was for 3 tankers. Craig Hoyle. "Saudi Arabia picks EADS to supply three Airbus A330-based tankers." *Flight Global*. 3 January 2008. <http://www.flightglobal.com/articles/2008/01/03/220605/saudi-arabia-picks-eads-to-supply-three-airbus-a330-based-tankers.html>

⁷⁷ For a thorough summary of the tanker contest near its mid-point, see Scott Hamilton. "Special Report: An In-Depth Look at the KC-X Competition." 4 September 2007. <http://www.leeaham.net/filelib/ScottsColumn090407.pdf>. Hamilton presciently notes that although Boeing clearly expected to win the competition, with its public relations strategy the company was laying the groundwork for a possible post-selection battle in the Congress: "Left unsaid is that the employees and taxpayers, as well as newspaper editorial boards and Op-Ed placements, are all voting constituents of Members of Congress. Personal meetings, lobbying and involving Congress members in rallies are all part of the masterful package Boeing has put together. There can be only one reason: to take the fight to Congress if the Air Force selects the KC-30." Hamilton's website is a goldmine of information and perspective on all issues related to the multifaceted contest between Boeing and Airbus/EADS. <http://www.leeaham.net/RunScript.asp?p=ASP\Pg0.asp>

⁷⁸ The EADS press release at the time contains numerous quotations from Alabama legislators praising the selection of the Mobile site in a competition that had initially involved proposals from 32 states. See the EADS website http://www.eads.com/1024/en/investor/News_and_Events/news_ir/2005/2005/en_20050622_Mobile.html

⁷⁹ For example, Scott Hamilton argued in a post of 30 October 2007: "But don't be fooled: while the KC-135 needs replacing, the KC-X is only a pawn on the international chessboard of commercial aviation. What the warfighter needs and what's best for him is merely a sideshow." <http://www.leeaham.net/filelib/ScottsColumn103007.pdf>

In October 2007, several members of Congress wrote to USAF Secretary Wynne urging him reject calls to divide the KC-X contract between the two contenders, and to maintain the winner-take-all structure for the contract.⁸⁰ In November 2007, USAF Under-Secretary for Acquisition Sue Payton described in greater detail the criteria, sub-factors and relationships among them used to evaluate the proposals.⁸¹ Both Boeing and Northrop Grumman submitted on 3 January 2008 the final revisions of their proposals for what the Secretary of Defense characterized as the highest priority of the USAF.⁸² In their final form, the proposals reflected long-standing and fundamental differences between the contending teams regarding the meaning of the USAF criteria, and how best to meet them.⁸³

Entrants and observers alike grew increasingly anxious as the often-delayed decision date neared in the high stakes contest.⁸⁴ Most analysts predicted a win for the Boeing team, based at least in part based on its claim that the 767 variant had greater American content than its European competitor.⁸⁵ In January 2008, EADS had sweetened the pot a bit more by announcing its intention to relocate assembly of its A330 freighter aircraft to the Mobile site, thus promising to bring even more jobs to the region were it to win the KC-X contract.⁸⁶

⁸⁰ John A. Tirpak. "Washington Watch." *Air Force Magazine OnLine*. December 2007, Vol. 90, No. 12. <http://www.afa.org/magazine/dec2007/1207watch.asp>

⁸¹ William Knight and Christopher Bolkcom. "Air Force Air Refueling: The KC-X Acquisition Program." 4 April 2008. *CRS Report for Congress*. Order Code RL34398. See pp. 20-22 for discussion of the criteria. http://assets.opencrs.com/rpts/RL34398_20080404.pdf

⁸² "The Air Force's number one acquisition and recapitalization priority is the tanker fleet, specifically the KC-135, which is an average of 48.5 years old. This aircraft is increasingly expensive to maintain and less reliable to fly every day. The Air Force is proceeding with a traditional acquisition program for the KC-X, which will be able to refuel Air Force, Navy, and allied aircraft." Robert M. Gates. "Statement of Secretary of Defense Robert M. Gates." *House Armed Services Committee*. 6 February 2008. http://armedservices.house.gov/pdfs/FC020608/Gates_Testimony020608.pdf

⁸³ "Size matters in US Air Force KC-X contest." *Flight International*. 21 January 2008. <http://www.flightglobal.com/articles/2008/01/21/220925/size-matters-in-us-air-force-kc-x-contest.html>

⁸⁴ Loren B. Thompson. "Deal of the Century: Who Will Win the Tanker Competition?" *The Lexington Institute*. 15 January 2008. <http://lexingtoninstitute.org/1214.shtml>. Thompson observed: "So the stakes are high. KC-X could end up being the second biggest military procurement in the world, surpassed only by the tri-service Joint Strike Fighter."

⁸⁵ Christopher Palmeri. "A \$40 Billion Tanker battle." *Business Week*. 28 February 2008. http://www.businessweek.com/bwdaily/dnflash/content/feb2008/db20080225_748004.htm?chan=search. Palmeri provides a brief but useful overview of the competition, and notes: "It will have an overall U.S. parts content of 85%, according to Boeing spokesman Bill Barksdale, compared to about half for the Northrop tanker. 'No matter how much our competitor wants to push back on that, it's definitely the American tanker,' Barksdale says."

The Air Force Decision, Boeing Protest and Congressional Reaction

On 29 February 2008, Air Force and Pentagon officials announced their decision in favor of the Northrop Grumman/EADS aircraft, now designated the KC-45.⁸⁷ Not only was the overall outcome of the KC-X competition a shock to nearly all observers as well as the competitors themselves, many were at least as surprised at the apparent margin of victory.⁸⁸ Dismayed at the decision and dissatisfied with the process, Boeing officials had difficulty dealing with the unexpected turn of events.⁸⁹ Stung and demanding an explanation, the company requested that the scheduled debriefing with the USAF be moved to an earlier date⁹⁰, and despite the potential risk to future business began considering whether it might protest the decision.⁹¹

Following a meeting with USAF officials on 7 March, Boeing filed on 11 March 2008 an initial protest with the Government Accountability Office (GAO) to challenge the award.⁹² That decision was based at least in part on concerns that Boeing had expressed a year earlier in discussions with the USAF regarding its analytical tools and evaluation procedures in the KC-X competition.⁹³ Boeing's protest was itself challenged by both

⁸⁶ Stephen Trimble. "KC-X win would shift A330 Freighter assembly to US." *Flight Global*. 14 January 2008. <http://www.flightglobal.com/articles/2008/01/14/220816/kc-x-win-would-shift-a330-freighter-assembly-to-us.html>

⁸⁷ Airforce Technology. "KC-45 Tanker, USA." <http://www.airforce-technology.com/projects/kc30tanker/>

⁸⁸ Loren B. Thompson. "Tanker Competition: Northrop Won By A Large Margin." *The Lexington Institute*. 3 March 2008. <http://lexingtoninstitute.org/1234.shtml>

⁸⁹ Amy Butler and David A. Fulghum. "Tanker Loss Prompts Soul-Searching at Boeing." *Aviation Week*. 8 March 2008. http://www.aviationnow.com/aw/generic/story_generic.jsp?channel=awst&id=news/aw031008p2.xml&headline=Tanker%20Loss%20Prompts%20Soul%20Searching%20at%20Boeing

⁹⁰ "Boeing Statement on Tanker Deal." *Business Week*. 4 March 2008. http://www.businessweek.com/bwdaily/dnflash/content/mar2008/db2008034_774446.htm

⁹¹ Keith Epstein. "Why Boeing Shouldn't Protest." *Business Week*. 4 March 2008. http://www.businessweek.com/bwdaily/dnflash/content/mar2008/db2008034_698398.htm?chan=search

⁹² Judith Crown and Keith Epstein. "Boeing Files Tanker Protest." *Business Week*. 11 March 2008. http://www.businessweek.com/bwdaily/dnflash/content/mar2008/db20080311_092864.htm?campaign_id=rss_topStories. Also see August Cole. "Boeing Details Complaints Over U.S. Tanker Choice." *The Wall Street Journal*. 17 March 2008. http://online.wsj.com/article/SB120572427704540961.html?mod=googlenews_wsj. On Boeing's strategy see Loren B. Thompson. "Boeing Fights Back: How It Plans to Prevail." *The Lexington Institute*. 12 March 2008. <http://lexingtoninstitute.org/1240.shtml>.

⁹³ Amy Butler. "USAF on the KC-X Defensive A Year Ago." *Aviation Week*. 19 March 2008. http://www.aviationweek.com/aw/generic/story_channel.jsp?channel=defense&id=news/KCX031908.xml&headline=USAF%20On%20The%20KC-X%20Defensive%20A%20Year%20Ago

Northrop Grumman and the USAF, but the GAO ultimately rejected that move and considered Boeing's request, with formal hearings beginning in the first week of May.⁹⁴ Under the terms of the procurement process, the GAO was required to issue its decision within 100 days of Boeing's initial challenge, by 19 June 2008.⁹⁵

Evan as Boeing was pursuing its options under the formal procurement process, the conflict was unfolding in the public arena as well. No sooner had the results been announced than both sides engaged in a full-scale public relations battle reminiscent (predictably) of a political campaign complete with rival press briefings, conference calls, and websites.⁹⁶ Entire Congressional delegations were mobilized on both sides⁹⁷, and the political rhetoric quickly became heated.⁹⁸ Early on in the debate, many influential lawmakers—even those from districts without direct material stakes in the procurement—threatened not to fund the purchase of a foreign aircraft because of the effect on jobs

⁹⁴ Andrea Shalal-Esa. "US GAO begins hearing on Northrop/EADS tanker deal." *Reuters*. 1 May 2008.
<http://www.reuters.com/article/marketsNews/idUSN0539240420080505?pageNumber=2&virtualBrandChannel=0&sp=true>.

⁹⁵ An excellent summary of the procurement saga up to the time just prior to the GAO decision can be found in John A. Tirpak. "The Tanker Endgame?" *Air Force Magazine OnLine*. June 2008.
<http://www.airforce-magazine.com/MagazineArchive/Pages/2008/June%202008/0608tanker.aspx>.

⁹⁶ Bob Brewin. "Tanker Wars on the Web." *Government Executive.com*. 14 April 2008.
<http://www.govexec.com/dailyfed/0408/041408wb.htm>. For example, see Northrop Grumman's corporate website. <http://www.northropgrumman.com/>. The main page is dominated by an image of the company's victorious entrant captioned with "Northrop Grumman KC-45: Why We Won." Beneath the caption is a set of topical links (Mission Capability, Cost Comparison) touting the aircraft's design and performance features. Boeing also maintains a website devoted to the issue at <http://www.boeing.com/ids/globaltanker/>

⁹⁷ See Appendix 1 identifying the some of most active Representatives and Senators on both sides of the issue. See Appendix 2 for listings of news broadcasts dealing with the controversy, and including video clips of many of the main protagonists.

⁹⁸ John M. Donnelly. "Lawmakers Line Up For Tanker Battle." *CQ Politics*. 25 April 2008.
<http://www.cqpolitics.com/wmspage.cfm?parm1=5&docID=news-000002711873>

and the industrial base.⁹⁹ Union leaders led protests to publicize their opposition to the deal and pressure Congress to reverse the decision.¹⁰⁰

Not only did many in Congress state their strong opposition to the contract, some in the Democrat leadership singled out Republican presidential candidate John McCain to blame for a foreign company receiving US taxpayer funds.¹⁰¹ Despite his claim to have merely sought to assure a fair procurement, McCain's protestations could not quell the anger.¹⁰² McCain did have his defenders in the press, but they were few and far between, and faced a vocal and increasingly shrill outcry.¹⁰³ Especially aggrieved were those in the Washington State and Kansas delegations, the states most adversely affected by the Boeing defeat.¹⁰⁴ Fallout from the tanker issue became much more serious for the McCain campaign as his national finance co-chairman Tom Loeffler was

⁹⁹ For example see the statements of Representative Jack Murtha, Chairman of the House Appropriations Subcommittee on Defense during the hearings of Wednesday 5 March 2008 on the tanker contract award. Murtha, Norman Dicks, Todd Tiahrt and other committee members grilled Air Force officials, especially Sue Payton, on the decision especially regarding the economic and industrial implications of the award. A video of the contentious hearing can be found in the C-SPAN Video Library, which also displays a timed transcript as the nearly 2 hour video plays. http://www.c-spanarchives.org/library/index.php?main_page=product_video_info&products_id=204284-1. Also see "New Fuel for Protectionism?" *Flight International*. 11 March 2008. <http://www.flightglobal.com/articles/2008/03/11/222129/new-fuel-for-protectionism.html>

¹⁰⁰ Michelle Dunlop. "Boeing Machinists say tanker decision is 'outsourcing our future'". *HeraldNet*. 20 March 2008. <http://www.heraldnet.com/article/20080320/BIZ/478589108>

¹⁰¹ David M. Herszenhorn. "Lawmakers Threaten to Kill Tanker Deal." *New York Times*. 6 March 2008. http://www.nytimes.com/2008/03/06/washington/06tankers.html?_r=1&oref=slogin. "Having made sure that Iraq gets new schools, roads, bridges and dams that we deny America, now we are making sure that France gets the jobs that Americans used to have," said Representative [Rahm Emanuel](#), Democrat of Illinois. "We are sending the jobs overseas, all because John McCain demanded it." In threatening to cut off funding for the tanker if Northrop Grumman were to keep the award, Representative Murtha was ready to find fault: "Senator McCain himself held this thing up," Murtha told reporters after giving a speech at the Center for American Progress. "It's very difficult for me to see this tanker going overseas," he added. Richard Cowan. "Lawmaker eyes move to block tanker money." *Reuters*. 1 May 2008. <http://www.reuters.com/article/politicsNews/idUSN0140192420080501?virtualBrandChannel=1012&sp=true>

¹⁰² Jim Kuhnhenn and Matthew Daly. "McCain Defends His Tanker Inquiries." *Associated Press*. 11 March 2008. http://www.boston.com/news/nation/articles/2008/03/11/mccain_advisers_lobbied_for_airbus/?page=1. McCain said: "I had nothing to do with the contract, except to insist in writing, on several occasions, as this process went forward, that it be fair and open and transparent," he said at a meeting with voters in St. Louis. "That was my involvement in it."

¹⁰³ For example see David Freddoso. "A Good Deal of Credit to McCain for Stopping a Bad Deal." *National Review*. 10 March 2008. <http://article.nationalreview.com/?q=YzBIZGY5YTE0MWQ1YjQyNzY2NWQ1ODQ2MWYzMGVknjQ>

forced to resign amid revelations that he had lobbied on behalf of EADS.¹⁰⁵ The incident was particularly embarrassing because McCain himself had insisted that no-one with active ties to lobbyists could work for his campaign.¹⁰⁶ The smoldering controversy would reignite in the wake of the GAO decision, and may well remain an important issue in the general election campaign (discussed below).

In the face of the controversy, Northrop Grumman and EADS continued to emphasize the merits of the KC-45 aircraft, and to tout the benefits that its selection would bring to the Air Force and the US industrial base.¹⁰⁷ The team received a welcome bit of news that arguably confirmed the wisdom of the USAF decision, when in mid-April the UK Ministry of Defence (MoD) signed a service contract involving 14 A330s to meet its Future Strategic Tanker Aircraft Requirement (FTSA). Ironically, the complex public/private funding arrangement involves elements of leasing¹⁰⁸, and in 2004 the MoD had rejected a rival bid from a team led by Boeing.¹⁰⁹

During Spring 2008, the tanker controversy was remarkable for the prominence given by the national media to the typically arcane topic of military procurement.¹¹⁰ Some in Congress hoped to finesse the issue by splitting the contract award between the two teams, but such proposal found few supporters within the Air Force, the Congress or the firms themselves.¹¹¹ Others threatened to revisit the subsidy issue as a way to preclude

¹⁰⁴ Matthew Daly. "Angry Boeing Supporters Target McCain." *Associated Press*. 8 March 2008. <http://64.233.183.104/search?q=cache:QMUGKtgQ42YJ:apnews.myway.com/article/20080308/D8V9AE100.html+http://apnews.myway.com/article/20080308/D8V9AE100.html&hl=en&client=firefox-a&gl=us&strip=1>

¹⁰⁵ Jim Kuhnhen. "McCain's national finance so-chair resigns." *Boston.com*. 19 May 2008. http://www.boston.com/news/nation/articles/2008/05/19/mccains_national_finance_co_chair_resigns/.

¹⁰⁶ Michael Isikoff. "McCain vs. lobbyists." *Newsweek*. 19 May 2008. <http://www.newsweek.com/id/137522>

¹⁰⁷ Northrop Grumman. "KC-45 Tanker." <http://www.northropgrumman.com/kc45/>

¹⁰⁸ See the AirTanker consortium website. <http://www.airtanker.co.uk/>

¹⁰⁹ Chris Pocock. "War of Words over KC-X Continues; UK Seals Deal for Airbus Tankers." *AIN Online*. 15 April 2008. <http://www.ainonline.com/news/single-news-page/article/war-of-words-over-kc-x-continues-uk-seals-deal-for-airbus-tankers/>. According to the article: "A senior RAF officer told AIN that the RAF prefers the A330 to the 767 because of age and size considerations. 'It was cheaper to meet the RAF's requirement with a smaller number of bigger aircraft,' he said.

¹¹⁰ See Appendix 2 for several examples.

¹¹¹ Billy House and Amy Dominello. "Florida Congressman Suggests Splitting Tanker Contract." *Media General News Service*. 9 May 2008. <http://www.mgwashington.com/index.php/news/article/florida-congressman-suggests-splitting-tanker-contract/975/>

Northrop Grumman and EADS from winning the award by requiring that the Air Force consider any WTO eventual ruling in its evaluation.¹¹²

Even as the controversy swirled and the GAO decision was anxiously awaited, an intriguing subplot unfolded as Secretary of Defense Robert Gates announced 5 June 2008 the forced resignations of both the civilian and military leaders of the Air Force. Although Secretary Wynne and Chief of Staff Moseley were fired because of lax oversight of nuclear weapons, the concern is that the turbulence at the top of the USAF could forestall definitive resolution of the tanker controversy, especially if the GAO were to uphold even part of Boeing's protest.¹¹³ The turmoil gave new hope to Boeing supporters such as Washington Senator Patty Murray:

Today's resignations raise new red flags about procurement and oversight within the Air Force. For months the Air Force has stonewalled Congress and the American people in answering basic questions about the tanker decision. Now, on the eve of a GAO ruling, the Administration itself has expressed a lack of confidence in the decision-making and leadership of the Air Force's top officials. The American people deserve real answers about what happened within the Air Force and why this decision was made before \$35 billion of taxpayer money is shipped overseas. I hope with new leadership and oversight we get those answers.¹¹⁴

In the Mobile area, reaction to the news as delivered by the local CBS affiliate was predictably and markedly less enthusiastic, and when interviewed Senator Shelby reckoned that Boeing would certainly try hard to use the controversy to its advantage. "Well, I think Boeing will do anything they can to sabotage or set aside this award contract to Northrop Grumman EADS, they've shown that. They're in a fierce fight but I've said all along, the Air Force did the right thing. I believe that."¹¹⁵

The GAO Decision and Its Impact.

¹¹² Jim Wolf. "House panel eyes subsidy review on tanker deal." *Reuters*. 14 May 2008. <http://www.reuters.com/article/politicsNews/idUSN1454722720080515>

¹¹³ Andrea Shalal-Esa. "U.S. Air Force firings raise questions about contracts." *Reuters*. 5 June 2008. <http://www.reuters.com/article/reutersEdge/idUSN0540952120080605>. Also see AP. "Wall Street Braces for impact of Air Force leadership transition on key acquisition programs." *International Herald Tribune*. 6 June 2008. <http://www.iht.com/articles/ap/2008/06/06/business/NA-FIN-US-Defense-Contractors-Outlook.php>. The article notes: "Compounding the fact that fiscal 2009 budget requests have yet to be completed, analysts said the timing of Gates' decision could further affect several programs, including Boeing's high-profile challenge of a \$35 billion deal awarded to Northrop Grumman and Airbus parent European Aeronautic Defence and Space Co."

¹¹⁴ Murray Statement on Air Force Resignations. 5 June 2008. <http://murray.senate.gov/news.cfm?id=298808>.

¹¹⁵ Tiffany Craig. "Boeing's New Ammunition." *WKRG*. http://www.wkrg.com/news/article/boeings_new_ammunition/14585/

On Wednesday 18 June, the GAO issued its long-awaited ruling on the merits of Boeing's protest.¹¹⁶ In the publicly-released summary, the GAO made it clear that it was not ruling on the relative strengths or weaknesses of the competing proposals, or on the capabilities of the aircraft themselves. Rather, the GAO faulted the Air force for not fairly evaluating the proposals and the planes with respect to key performance criteria.

The GAO decision should not be read to reflect a view as to the merits of the firms' respective aircraft. Judgments about which offeror will most successfully meet governmental needs are largely reserved for the procuring agencies, subject only to such statutory and regulatory requirements as full and open competition and fairness to potential offerors. The GAO bid protest process examines whether procuring agencies have complied with those requirements.

The GAO summary listed and briefly described the seven reasons that it had upheld Boeing's claims. The errors were sufficiently numerous and serious that the GAO recommended that the Air force essentially rerun the competition between the two entrants. However, this approach would not amount to a complete rebidding of the contract by opening the tanker contest to other entrants.¹¹⁷ Under the rules of the procurement protest process, the Air Force has 60 days to respond to the GAO decision, but is reserving any further comment until it has seen the full GAO document.¹¹⁸

The GAO decision could hardly have been more favorable for Boeing. Although the company itself was measured and even reserved in its statements, as recounted in the Seattle press, its workers and supporters in Congress were understandably ebullient.¹¹⁹

¹¹⁶ GAO. "GAO Sustains Boeing Bid Protest." *Government Accountability Office*. 18 June 2008. http://www.gao.gov/press/press-boeing2008jun18_3.pdf

¹¹⁷ John A. Tirpak. "Back to the Drawing Board." *airforce-magazine.com*. 20 June 2008. <http://www.airforce-magazine.com/DRArchive/Pages/2008/June%202008/June%2019%202008/BacktotheDrawingBoard.aspx>

¹¹⁸ Leslie Wayne. "Audit Says Tanker Deal Is Flawed." *New York Times*. 19 June 2008. http://www.nytimes.com/2008/06/19/business/19tanker.html?_r=1&oref=slogin. In a statement, the Air Force said it would not decide whether to reopen the bidding for the contract until it had fully reviewed the 69-page G.A.O. report. "Once the review is complete, the Air Force will be in a position to determine the best course of action," said the Air Force statement. Lt. Col. Karen Platt, an Air Force spokeswoman, said: "We don't know the way forward right now. It is a huge document, and it will take time to review it."

¹¹⁹ James Wallace. "Boeing back in tanker running." *Seattle Post-Intelligencer*. 19 June 2008. http://seattlepi.nwsourc.com/business/367462_tanker19.html. Also see Dominic Gates. "Boeing tanker 'Back in the Game' after GAO backs company's protest." *Seattle Times*. 19 June 2008. http://seattletimes.nwsourc.com/html/businesstechnology/2008005657_boeing19.html. "We welcome and support today's ruling by the GAO fully sustaining the grounds of our protest," said Mark McGraw, Boeing vice president for tanker programs, in a statement. "We look forward to working with the Air Force on next steps in this critical procurement for our warfighters."

The decision created elation in some parts of the country, and consternation in others.¹²⁰ Members of Congress from Alabama and the Gulf Coast region put on a brave face at the turn of events, and reminded anyone that would listen that the GAO ruling found fault with the Air Force selection process, not the KC-45 aircraft.¹²¹

The reaction of the Northrop Grumman team was predictably downbeat and terse. In the immediate aftermath of the decision, EADS asked that European government officials refrain from making comments that would only inflame the situation, and complicate ongoing and future efforts to salvage something from the deal.¹²² For EADS, the consequences of possibly losing the contract would be quite damaging to the firm's overall business strategy.

The decision on Wednesday by US congressional investigators to urge the US Air Force to re-open the competition and to obtain revised proposals from the contestants was much less of a surprise than EADS's initial victory, but it could still be a serious setback for the European group's long-held ambitions to build a significant presence in the US, which has by far the largest defence procurement budget in the world.¹²³

Despite the understandable disappointment at Northrop Grumman and EADS, the Air Force arguably was the biggest loser in the GAO decision. Criticism of its procurement practices was scathing, and its leadership characterized as inept: "I've never seen it this bad," said Laurence Korb, senior adviser the Center of Defense Information. "The Air Force system is basically broken, and you don't get the impression that the people there are up to the task."¹²⁴ For its part, the Pentagon defended its procurement process: "We

¹²⁰ "Perhaps nowhere in the world of military contracting did the economic outlook get brighter and dimmer, respectively, than in Everett, Washington, a Boeing stronghold, and Mobile, Alabama, where Northrop would assemble the tankers." Ben Evans. "Confusion over Air Force tanker deal leaves some U.S. towns in limbo, too." *International Herald Tribune*. 20 June 2008. <http://www.iht.com/articles/2008/06/20/business/tanker.php>

¹²¹ For example, see the editorial statement of Representative Jo Bonner, "Mobile Can Win." *Press-Register*. 22 June 2008. <http://www.al.com/opinion/press-register/index.ssf?/base/opinion/1214126214173610.xml&coll=3&thispage=1>

¹²² Gerrit Wiesmann et al. "EADS in call for calm on tankers." 20 June 2008. <http://www.ft.com/cms/s/0/f505b90e-3e61-11dd-b16d-0000779fd2ac.html>

¹²³ Kevin Done, et al. "More pain to come as European group fights on." *Financial Times*. 20 June 2008. <http://www.ft.com/cms/s/0/b76b0788-3e62-11dd-b16d-0000779fd2ac.html>. Regarding the effect the loss of the deal would have on EADS future prospects, the authors go on to note: "The threat to the deal could severely hurt EADS's efforts both to build a much bigger presence in the defence sector - to balance its current overwhelming dependence on commercial aircraft - and just as importantly it would undermine its attempts to shift more of its production into the dollar zone and out of expensive euro-based economies." For similar analysis, also see Sean Walters. "For EADS, a Bundle of Fears." *Barrons*. 23 June 2008. http://online.barrons.com/article/SB121400269620593193.html?mod=googlenews_barrons

¹²⁴ Christopher Hinton. "Air Force mishap highlights wider problems." *Marketwatch*. 20 June 2008. <http://www.marketwatch.com/news/story/air-force-tanker-mishap->

believe that the acquisition and contracting process that eventually produced Northrop Grumman and EADS as the winner of this deal was a fair and transparent one. It was very deliberate."¹²⁵

That favorable characterization was called into very serious question with the release one week later of a much more detailed version of the GAO decision.¹²⁶ Observers found the specifics even more damning of the Air Force, which comes out appearing unwilling or unable to follow its own rules.

The GAO document repeatedly blasts the USAF's methodology, saying it is not enough for the USAF's selection team to merely choose a proposal they perceive as superior. That is, it is not enough unless the justification for the decision is grounded in the evaluation criteria set down when a competition begins. In several important ways, the USAF's selection process deviated from this basic standard acquisition procedure, the GAO says. Most significantly, the USAF informed both competitors at the outset that no extra credit would be given to the aircraft that carried the most fuel, then selected the KC-30B largely on that basis. Even if it is true that the KC-30's greater payload volume makes the aircraft a better tanker, the GAO says, the USAF bears the responsibility for making that key discriminator known to both competitors from the beginning.¹²⁷

[highlights/story.aspx?guid=%7BA366A9A2-D241-4D9A-9FE0-ABF84D89E24E%7D&dist=msr_1](http://www.washingtonpost.com/highlights/story.aspx?guid=%7BA366A9A2-D241-4D9A-9FE0-ABF84D89E24E%7D&dist=msr_1)
The Washington Post quotes Richard Aboulafia in a similar vein regarding the GAO ruling: "We've not seen a document as scorching as this from an independent, nonpolitical agency," he said. "They are essentially saying there is either incompetency in the Air Force or there was political interference that led them to bend over backwards to benefit one competitor because they feared the power of the purse strings. Either way, the Air Force procurement system has gone horribly, horribly wrong. Dana Hedgpeth and Robert O'Harrow, Jr. "The Pentagon's Procurement Problem." *Washington Post*. 20 June 2008. <http://www.washingtonpost.com/wp-dyn/content/article/2008/06/19/AR2008061903622.html>

¹²⁵ Leslie Wayne. "Audit says Tanker Deal Is Flawed." *New York Times*. 19 June 2008. <http://www.nytimes.com/2008/06/19/business/19tanker.html?pagewanted=2&r=1>

¹²⁶ GAO. "Decision: Matter of the Boeing Company." Document for Public Release. 18 June 2008. <http://www.gao.gov/decisions/bidpro/311344.pdf>. 67 page redacted version released 25 June 2008.

¹²⁷ Stephen Trimble. "GAO faults USAF for basic errors on tanker contract award." *Flight International*. 27 June 2008. <http://www.flightglobal.com/articles/2008/06/27/224943/gao-faults-usaf-for-basic-errors-on-tanker-contract.html>. Trimble goes on to note: "Even if it is true that the KC-30's greater payload volume makes the aircraft a better tanker, the GAO says, the USAF bears the responsibility for making that key discriminator known to both competitors from the beginning." Trimble quotes: "Had Boeing known of the agency's desire for a larger aircraft that can carry more fuel, it likely would have offered the agency an aircraft based upon the 777 aircraft platform," the GAO report says. "The air force could have provided for unbounded consideration of the degree to which offerers exceeded the fuel offload versus unrefuelled range, but did not."

Agreement was widespread that the fuller version of the GAO report further strengthened Boeing's case by showing that its aircraft had stood a reasonable chance of being selected had the competition been conducted fairly.¹²⁸ These revelations understandably emboldened Boeing's Congressional supporters to not only press the Air Force and Pentagon to withdraw the award to the Northrop Grumman team¹²⁹, but also to introduce legislation that would effectively make Boeing the only possible winner of any future contract.¹³⁰ This legislative offensive forced Northrop Grumman supporters such as Senator Jeff Sessions of Alabama to fight a rearguard action in a decidedly unfavourable political environment.¹³¹

The Tanker Controversy and the 2008 Presidential Elections

Although the presidential primaries have understandably overshadowed all other news—including the tanker controversy—during the Winter and Spring of 2008, as Summer has unfolded the two stories have converged in a way that may spell trouble for the presumptive Republican nominee John McCain. He is now really feeling the heat from his Democrat rivals, who, in light of the GAO ruling, are even more emboldened to criticize his role in the botched procurement process.¹³² Not only has the controversy surrounding the tanker procurement process emerged as a divisive and increasingly partisan political issue, but has damaged the very core of McCain's campaign organization. The Senator from Arizona has pointed to his leading role in derailing the Boeing lease deal as evidence of his effective and long-standing commitment to fighting government waste and corruption. His critics and opponents, however, assert that McCain's relentless efforts in exposing collusion between Boeing and the Pentagon are driven by a more material motive, money.¹³³ The GAO ruling not only favored Boeing,

¹²⁸ James Wallace. "GOA: Boeing had a real shot at tanker." *Seattle Post-Intelligencer*. 25 June 2008. http://seattlepi.nwsourc.com/business/368402_tanker26.html?source=rss

¹²⁹ Richard Cowan. "US lawmakers urge Pentagon to reopen tanker bids." *Reuters UK*. 27 June 2008. <http://uk.reuters.com/article/rbssIndustryMaterialsUtilitiesNews/idUKN2744985520080627?pagenumber=2&virtualBrandChannel=0>. The article notes that the effort in the House is being led by Rosa DeLauro (see Appendix 1), a Democrat Representative from Connecticut, which is the home of Pratt Whitney whose engines would power the Boeing tanker.

¹³⁰ Sean Reilly. "New Bills Steer tanker to Boeing." *Press Register*. 27 June 2008. http://blog.al.com/live/2008/06/new_bills_steer_tanker_to_boei.html. Bills were introduced in both houses of Congress by members from Kansas, where Boeing would refit the 767 LCA for military tanker use.

¹³¹ Roxana Tiron. "Legislative fight over Air Force tanker intensifies." *The Hill*. 27 June 2008. <http://thehill.com/leading-the-news/legislative-fight-over-air-force-tanker-intensifies-2008-06-27.html>.

¹³² Georgina Coolidge. "McCain under Democratic fire for Air Force fiasco." *Reuters*. 22 June 2008. <http://www.reuters.com/article/reutersEdge/idUSN2241563520080622>. "In reality, Senator McCain intervened at key steps in the process, echoing the arguments of the EADS/Airbus consortium each time," the Democratic party headquarters said.

¹³³ Brian Montopoli. "Campaign Finance Complaint Filed Against McCain." *CBS News*. 12 June 2008. <http://www.cbsnews.com/blogs/2008/06/09/politics/horserace/entry4163803.shtml>

but “has also cast light on an overlooked aspect of McCain's crusade: five of his campaign's top advisers and fund-raisers—including Tom Loeffler, who resigned last month as his finance co-chairman, and Susan Nelson, his finance director—were registered lobbyists for EADS.”¹³⁴

As a member of the infamous Keating 5, such revelations and accusations should at the very least seriously damp McCain's enthusiasm in pressing the tanker deal as a campaign issue. This understandable reluctance would deprive the Northrop Grumman/EADS team of its single most important and effective ally as the battle in Congress over the KC-X program intensifies in the coming months.

Concluding observations on the KC-135 replacement process

The process adopted by the USAF to replace the KC-135 has failed to accomplish its intended purpose; to provide the US military with a capability crucial to warfighting. As a result (and in light of other scandals), both its civilian and military leadership are perceived by Congress, the media and the public as inept and its procurement policy as illegitimate. Thus, the contract award to Northrop Grumman/EADS cannot stand.

As a consequence of these failings, the KC-135 replacement process is now almost entirely a political as opposed to bureaucratic one, thus any eventual decision will be made in a legislative rather than an executive fashion. Therefore, the firms, industries and sectors that provide the jobs and tax base for the constituent communities (industrial base) of the Representatives and Senators will be the most important considerations (even over cost &/or performance) in the KC-135 procurement process.

While all major defense procurement programs pit states and regions of the US against one another as they seek the project's economic benefits, this contentious dynamic has been complicated and intensified by the international dimensions of the KC-X competition. Since one of the two firms that can supply the technology needed to make an effective tanker (a modern LCA convertible to military use) is characterized and perceived as foreign, and because the procurement process is now primarily political in nature, that firm (EADS/AI) and its aircraft (A300/MRTT) **cannot** be selected now or in the future to replace the KC-135.

The posting concerns the claims made by the group Campaign Money Watch that John McCain's 2008 election campaign may have violated federal election law in connection to the KC-X competition. The piece contains a link to the YouTube posting of the group's 30 second ad accusing McCain of accepting donations from EADS US executives, and that members of McCain's staff lobbied for Airbus, and that McCain “intervened” on behalf of Airbus so that it received the award. There is also a link to the group's formal complaint to the FEC regarding payments made by to Susan Nelson, the national finance director for the McCain campaign by the lobbying firm The Loeffler Group, LLC. In the complaint, Campaign Money Watch claims that during 2007 and 2008 Nelson was paid by Loeffler, her former employer, even after she had left the lobbying firm to take the position with the McCain campaign. The complaint asserts that these payments for “severance” and “consulting” actually were subsidies paid by Loeffler to the McCain campaign staff, which (if true) would violate federal election law. Loeffler had lobbied on behalf of EADS North America as it sought the KC-X and other US government and military contracts.

¹³⁴ Michael Isikoff. “McCain's Boeing Battle Boomerang.” *Newsweek*. 30 June 2008 Issue.
<http://www.newsweek.com/id/142658>

Boeing is the only American manufacturer of a modern line of LCA that might be converted to tanker use (and to airlift/cargo applications as well) in the near term. Therefore, the political and industrial realities make the company effectively the “sole-source supplier” of aerial refueling capacity for the US military, at least for the foreseeable future.

Under these circumstances, having a competition to select the designer and builder of any tankers that would be delivered within the next 10 years or so is pointless. Therefore, rather than engaging in another charade, the USAF and DOD should work with Boeing to define a feasible aircraft, and persuade Congress to fund its procurement. Decisions about the program’s structure, cost and financing should be made in an open and transparent way, with the advice and guidance of the GAO, CBO and other competent and disinterested public and private entities.

Designating Boeing sole-source supplier for the KC-135 replacement tanker, and acknowledging that industrial base criteria must be considered in this and all major procurement programs would make explicit Boeing’s de facto role in US industrial policy. Already widely understood in Europe, the neo-mercantilist idea that defense procurement programs should serve not only to develop and buy military hardware but also to create and maintain industrial and technological capabilities vital to national security can be readily accepted by the American public and its elected representatives.

This recognition of Boeing’s status as “national champion” could have the unintended but desirable effect of draining the life-blood from the rancorous transatlantic LCA subsidy dispute, as both sides could set aside their fig leaves and affirm that all aircraft programs have and always will require government support to ever become viable.

The DOD should acknowledge publicly that the current political and economic realities in the US preclude procurement of the KC-X or any major military equipment or systems from “non-US suppliers”. As a practical matter, this policy will mean that any contractor or team awarded a major DOD contract must have majority American ownership, and that a large proportion (+70%) of all costs of the project be paid out to US suppliers and workers.

The KC-135 procurement debacle should also put paid to another fiction—the possibility of a transatlantic “two-way street” market in defense hardware. Not only will the Pentagon have to dispense with its well-intentioned effort of recent years to allow foreign firms to bid on (and actually win a few) procurement programs, the Europeans will be much less willing to solicit bids from American firms whose own government can’t actually reciprocate.