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August 1, 2019

VIA ELECTRONIC TRANSMISSION

The Honorable Mark Esper
Secretary of Defense
U.S. Department of Defense
3010 Defense Pentagon
Washington, DC 20301-3010

Dear Secretary Esper:

Since its inception, the F-35 Joint Strike Fighter (F-35) has been plagued by technical issues, delays, and exorbitant costs.¹ Recently, two audits of the F-35 program conducted by the Department of Defense Office of the Inspector General (OIG) revealed numerous shortcomings related to the Department of Defense's (DOD) oversight of the F-35 sustainment program. The

¹ See Gerry Doyle, *Factbox: The F-35 – Stealthy, Numerous and Expensive*, REUTERS (Apr. 10, 2019), available at <https://www.reuters.com/article/us-japan-defence-f35-factbox/factbox-the-f-35-stealthy-numerous-and-expensive-idUSKCN1RM2D0>; Oriana Pawlyk, *The Marine Corps Deployed with the Wrong Parts for its F-35s, and it Points to a Lingering Problem with the Stealth Fighter*, BUSINESS INSIDER (April 30, 2019) available at <https://www.businessinsider.com/supply-chain-issues-marines-to-deploy-with-wrong-spares-parts-for-f-35-2019-4> (stating that the Marine Corps deployed with wrong parts due to lapses in supply chain management); Valerie Insinna, *Government Watchdog Finds More Problems with F-35 Spare Parts Pipeline*, DEFENSE NEWS (April 26, 2019) available at <https://www.defensenews.com/air/2019/04/25/government-watchdog-finds-more-problems-with-f-35s-spare-parts-pipeline/> (stating that GAO found that only half of the F-35s worldwide were ready to fly during an eight-month period in 2018); Alex Fang, *Crashed F-35A Fighter Jet Located, US General Says*, NIKKEI ASIAN REVIEW (April 30, 2019) available at <https://asia.nikkei.com/Politics/International-relations/Crashed-F-35A-fighter-jet-located-US-general-says> (stating that both China and Russia are eager to acquire information on the F-35, and that the U.S. is unclear as to whether or not it has found the Japanese F-35A that crashed off the coast of Japan on April 9th near Misawa Air Base which is approximately 370 miles from the Russia coast and approximately 550 miles from the Chinese border); *Pentagon: The F-35 Is Secure Despite Chinese Hacking*, REUTERS (Jan. 20, 2015) available at <https://www.businessinsider.com/r-pentagon-says-classified-data-on-us-f-35-jet-fighter-program-remains-secure-2015-1> (stating that documents leaked by Edward Snowden showed that China stole “many terabytes” of data concerning the F-35); see also TNI Staff, *A Frightening Fact the F-22 and F-35 Share (And Why Chinese Stealth Fighters Are in the Skies)*, THE NATIONAL INTEREST (April 26, 2019) available at <https://nationalinterest.org/blog/buzz/frightening-fact-f-22-and-f-35-share-and-why-chinese-stealth-fighters-are-skies-54392> (stating that both China and Russia have already acquired “reams” of information concerning the F-35 via hacking of Department computers).

lack of oversight has not only resulted in financial waste and further delays to the mission readiness of the F-35, but has potentially jeopardized the lives of pilots responsible for flying these aircraft.²

On March 13, 2019, OIG released a report regarding DOD's failure to properly account for and manage government property relating to the F-35 program. Specifically, OIG determined that DOD did not: (1) maintain an independent government record of F-35 Government Furnished Property; (2) award contracts with complete Government Furnished Property lists; and (3) coordinate with Defense Contract Management Agency officials to transition Contractor-Acquired Property to Government Furnished Property as required.³

Since DOD officials did not maintain an independent record of F-35 government property, Lockheed Martin Aeronautics (Lockheed), the prime contractor for the F-35 program, and its subcontractor hold the only record of the 3.45 million pieces of property that DOD purchased, valued at \$2.1 billion.⁴ Per the OIG report, DOD currently has no mechanism to independently verify the veracity of the Lockheed record.⁵ It may also further set back DOD's already delayed operational readiness goals for the F-35.⁶ A contributing factor to this predicament is DOD's failure to appoint key oversight and accountability personnel, including a component property lead and an accountable property officer. If appointed, these individuals would have been responsible for overseeing critical property administration functions.⁷ However, despite assurances from the F-35 Program Office's Director of Program Operations that both vacancies would be filled by the end of March 2018, both positions remain vacant.⁸

In a separate report published on June 17, 2019, OIG detailed how the Joint Program Office failed to provide adequate oversight of Lockheed's performance as it relates to F-35 spare parts and aircraft availability hours.⁹ Specifically, OIG found that DOD did not receive parts that were ready for use and installation (RFI) for the F-35 "in accordance with contract requirements and paid performance incentive fees on the sustainment contracts based on inflated and unverified F-35A aircraft availability hours."¹⁰ Per the terms of its contract with DOD, Lockheed is required to deliver RFI spare parts.¹¹ However, OIG determined that Lockheed has not been meeting this

² See INSPECTOR GEN., U.S. DEP'T OF DEF., DODIG-2019-062, AUDIT OF MANAGEMENT OF GOVERNMENT-OWNED PROPERTY SUPPORTING THE F-35 PROGRAM (2019), available at <https://media.defense.gov/2019/Mar/15/2002101767/-1/-1/1/DODIG-2019-062.PDF>.

³ See *id.* at 2 (defining GFP as "property that is in the possession of, or directly acquired by, the government and the furnished to the contractor for performance of a contract").

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ U.S. DEP'T OF DEF. INSTRUCTION 5000.64, *Accountability and Management of DOD Equipment and Other Accountable Property* (as amended Aug. 31, 2018); DOD Instruction 5000.64 requires "DOD Component heads to appoint a component property lead and an accountable property officer to oversee critical property administration functions."

⁸ *Id.* at 12-13.

⁹ INSPECTOR GEN., U.S. DEP'T OF DEF., DODIG-2019-094, AUDIT OF F-35 READY-FOR-ISSUE SPARE PARTS AND SUSTAINMENT PERFORMANCE INCENTIVE FEES (2019), available at <https://media.defense.gov/2019/Jun/17/2002146073/-1/-1/1/DODIG-2019-094.PDF>.

¹⁰ *Id.* at i (defining RFI as spare parts that "1) are ready for aircraft maintenance personnel to install on the aircraft, and 2) have an Electronic Equipment Logbook (EEL) assigned, which includes information such as part history and remaining life (hours)").

¹¹ *Id.* at 7.

requirement since F-35 sustainment efforts began in 2015.¹² Additionally, OIG indicated that the Joint Program Office was aware of this problem, but did not take adequate steps to resolve the issue or require the military branches to track the number of unusable (NRFI) spare parts they received.¹³

If DOD personnel receive NRFI parts for an F-35, they are instructed to attempt a seven-step process to bring the part to an RFI condition and make it available for use.¹⁴ If DOD personnel cannot resolve the problem using the seven-step process, personnel submit an Action Request to Lockheed to resolve the issue, the cost of which is incurred by the government.¹⁵ However, DOD personnel at two F-35 sites were forced to resort to issuing local policies allowing them to circumvent the seven-step process in order to fly aircraft with NRFI spare parts.¹⁶ Similarly, DOD personnel at several F-35 sites used spreadsheets or whiteboards in order to track the amount of time NRFI parts were used on an aircraft.¹⁷

Between December 2015 and June 2018, DOD personnel submitted over 15,000 Action Requests to Lockheed to fix NRFI spare parts.¹⁸ OIG could not determine the cost resulting from these ARs because Lockheed refused to disclose the amount it charged DOD for each Action Request, despite numerous requests by OIG to do so.¹⁹ However, OIG did determine that, since 2015, DOD has spent up to \$303 million in labor costs as a result of manual processes necessary to remedy the issues with NRFI parts.²⁰ DOD will continue to pay up to \$55 million annually until the issue is finally resolved.²¹ Even more egregious than the financial burden of the DOD's lack of oversight is the fact that "until the DOD addresses the delivery of [NRFI] spare parts, the use of manual processes to mitigate [NRFI] problems creates a life and safety concern for aircrews."²²

Under its sustainment contracts with DOD, Lockheed receives performance incentive fees based on its ability to meet certain performance metrics related to the number of aircraft availability hours.²³ By installing NRFI spare parts on F-35s that did not have the necessary logistical paperwork, DOD personnel unintentionally inflated aircraft availability hours.²⁴ Additionally, Lockheed was solely responsible for collecting and reporting F-35 aircraft availability hours. As a result, the Joint Program Office paid Lockheed nearly \$26 million in

¹² *Id.* See also *United Technologies Corp. v. U.S.*, 27 Fed. Cl. 393, 399-400 (1992) ("The government assumes the risk of performance in [a cost-reimbursement contract] because the contractor receives only what it spends plus a previously determined fee.").

¹³ INSPECTOR GEN., U.S. DEP'T OF DEF., DODIG-2019-094, AUDIT OF F-35 READY-FOR-ISSUE SPARE PARTS AND SUSTAINMENT PERFORMANCE INCENTIVE FEES 7 (2019), available at <https://media.defense.gov/2019/Jun/17/2002146073/-1/-1/1/DODIG-2019-094.PDF>.

¹⁴ *Id.*

¹⁵ *Id.* at 7.

¹⁶ *Id.* at 8.

¹⁷ *Id.* at 9.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 15.

²² *Id.* at 16.

²³ *Id.* at 9.

²⁴ *Id.*

performance incentive fees for the 2017 sustainment contract, 85% of the total amount available for this purpose, based on inflated and unverified data.²⁵ In short, due to a lack of DOD oversight, and insufficient internal mechanisms, Lockheed is delivering NRFI parts to DOD, resulting in overinflated “up aircraft” statistics – for which they receive financial incentives – and receiving additional payment for repairing the parts they initially delivered in an NRFI condition.

Both of these reports indicate significant mismanagement and poor oversight of the F-35 program on the part of DOD. So long as these issues remain, DOD will continue hemorrhaging money on the F-35 program. Even more egregious is that continued reliance on manual processes to mitigate NRFI parts problems threatens not only the operational readiness of F-35s but also the safety of the men and women who pilot them.²⁶ It is imperative that DOD act quickly to resolve the issues addressed herein in order to prevent additional wasteful spending. In an effort to better understand how DOD oversees the F-35 program and how the agency can improve oversight standards, please answer the following questions no later than August 15, 2019:

1. DOD concurred with DOD OIG’s recommendations in both reports.²⁷ When does the Department expect to complete implementation of those recommendations?
2. Is there any way to restructure future F-35 sustainment contracts to require Lockheed to incur the cost of fixing NRFI parts improperly provided to DOD?
 - a. What DOD personnel are taking part in negotiating the next F-35 sustainment contract?
 - b. What steps has the DOD taken to ensure that personnel are complying with FAR requirements and ethics standards to ensure fair, impartial negotiations in the best interests of the United States?
3. Does DOD have any mechanism for verifying Lockheed’s self-reported losses? If not, why not?
4. Does DOD intend to conduct a full audit of its Government Furnished Property and other inventory related to the F-35? If so, when? If not, why not?
5. Does DOD intend to develop and implement a system to verify and track the parts it receive from Lockheed? If not, why?

²⁵ *Id.* at 10.

²⁶ *Id.* at 16.

²⁷ *Id.* at 16-18; INSPECTOR GEN., U.S. DEP’T OF DEF., DODIG-2019-094, AUDIT OF F-35 READY-FOR-ISSUE SPARE PARTS AND SUSTAINMENT PERFORMANCE INCENTIVE FEES 15-20 (2019), available at <https://media.defense.gov/2019/Jun/17/2002146073/-1/-1/1/DODIG-2019-094.PDF>.

6. Does the F-35 Program Office intend to appoint a component property lead and an accountable property officer per OIG's recommendation and as required by DOD Instruction 5000.64? If so, how will the persons selected to fill these roles be chosen?
 - a. How will DOD ensure these officials improve oversight of F-35 program, specifically regarding the acquisition of RFI spare parts?
7. Has anyone been held accountable for the mismanagement/loss of over \$2 billion of government property?
 - a. Who was initially responsible for appointing a DOD component property lead as required by DOD Instruction 5000.64?
 - b. Who was in charge of supervising the Contract Officer's Representatives?
8. Does DOD intend to better equip personnel to identify NFRI parts prior to accepting shipment? If not, why?

Should you have questions, please contact Daniel Boatright or Quinton Brady of my Committee staff at (202) 224-4515. Thank you for your attention to this important matter.

Sincerely,



Charles E. Grassley
Chairman
Senate Committee on Finance

CC
The Honorable Ellen M. Lord
Under Secretary of Defense for
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3010 Defense Pentagon
Washington, DC 20301-3010

Lt. Gen. Eric T. Fick, U.S.A.F.
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I hope you will take this issue seriously. The F35 is the best, but not so if the organization to supply parts is not functioning well.