

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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October 21, 2014

The Honorable Charles F. Bolden, Jr.
Administrator
National Aeronautics and
Space Administration (NASA)
300 E Street SW
Suite 9L39
Washington, DC 20546

Dear Administrator Bolden:

As NASA enters a crucial period in the development of both its low-Earth orbit and beyond-Earth orbit systems, I want to call your attention to a number of requests we have made related to the status of these efforts.

On August 27, 2014, we wrote you to request an update on the Space Launch System (SLS) and the Orion crew vehicle shortly after NASA conducted its Key Decision Point C (KDP-C) review.¹ We asked for a response by September 10, 2014. To date, we have only received an acknowledgement of the letter's receipt. As I am sure you are aware, the SLS and Orion programs are national priorities that will facilitate America's return to preeminence in space. SLS recently passed KDP-C, and the Exploration Flight Test (EFT-1) of Orion is only weeks away. The information requested in our August 27, 2014 letter will greatly assist Congress as it assesses NASA's progress on these two programs.

Separately, on a number of occasions in the past year, we requested records related to NASA's historic treatment of potential termination liability (PTL) obligations under federal acquisition regulations (FAR), as well as how PTL is treated across NASA programs.² To date, NASA has provided an incomplete production of records for only four individuals. NASA still has not provided a notional schedule for the production of the remaining records. The Committee has gone to great lengths to accommodate NASA's request to limit the burden of producing these records. For instance, the Committee only requested records for 1) a narrow window of time; 2) a select number of offices; and 3) a very specific keyword search. Furthermore, the Committee also agreed to further limit NASA's search to an initial four individuals, followed up by an additional four individuals. Finally, the Committee also agreed to an *in camera* review in order to narrow NASA's workload to only review records the Committee deemed necessary to inform its oversight obligations. In total, the Committee's

¹ Letter from Chairmen Lamar Smith and Steven Palazzo, House Science, Space, and Technology Committee to Administrator Charles Bolden, NASA, August 27, 2014. Attachment 1.

² Letter from Chairmen Lamar Smith and Steven Palazzo, and Rep. Mo Brooks, House Science, Space, and Technology Committee to Administrator Charles Bolden, NASA, March 18, 2014. Attachment 2.

accommodations resulted in a narrow and clearly manageable request as compared to other requests by the Committee under both Republican and Democratic leadership, as well as other congressional Committees. The Committee's request is neither burdensome, nor unnecessarily broad. NASA's last assessment of the PTL liabilities associated with major programs at NASA eclipsed \$500 million – a value that could have significant unnecessary impacts. The Committee is currently evaluating legislative solutions; however, absent NASA's full cooperation, our investigation of NASA's current and historical treatment of PTL (as well as the options and rationales considered) will be incomplete. This lack of cooperation could lead to the unnecessary delay of major NASA programs.

Finally, on September 16, 2014, Subcommittee staff reached out to NASA in order to gain support for facilitating a briefing on the Commercial Crew Transportation Capabilities (CCtCap) contract source selection, as well as the source selection statement. After NASA issued the request for proposals (RFP) for the contract it declined to comment on the procurement so as to not influence the selection. Understanding the sensitive nature of the source selection process, the Committee decided to reserve questions regarding the procurement until after the selection. Similarly, the Committee also withheld queries until after the offerors were briefed on the selection. It is our understanding that at this point all of the offerors have been briefed. Unfortunately, NASA continues to delay providing Congress with information related to this program and the source selection. We are aware that the selection was referred to the Government Accountability Office (GAO)³ as part of its bid protest process;⁴ however, this should not preclude NASA providing information to Congress as the statute that governs the protest process states “[a] protective order under this paragraph shall not be considered to authorize the withholding of any document or information from Congress or an executive agency.”⁵ To date, the Committee has not been briefed on the source selection, nor has it received the source selection statement, despite the fact that offerors have been briefed, details were released to the press,⁶ the GAO is now involved; and NASA has decided to proceed with the contracts.⁷ Up to this point, NASA has not provided Congress with detailed information related to the CCtCap source selection in almost one year during the “blackout period.” We assume the Administration will submit a budget proposal to Congress in the next few months that will include funding for the CCtCap program. Congresses' ability to evaluate this budget request may be challenged by NASA's uncooperative position. We hope that NASA will not expect taxpayers to blindly fund billion-dollar programs absent any information related to the procurement or contract. This Committee has demonstrated a commitment to ensure that

³ GAO's mission “is to support the Congress in meeting its constitutional responsibilities and to help improve the performance and ensure the accountability of the federal government for the benefit of the American people. We provide Congress with timely information that is objective, fact-based, nonpartisan, nonideological, fair, and balanced.” Accessed at <http://www.gao.gov/about/index.html>.

⁴ “A bid protest is a challenge to the award or proposed award of a contract for procurement of goods and services or a challenge to the terms of a solicitation for such a contract.” Accessed at <http://www.gao.gov/legal/bids/bidfaqs.html#1>.

⁵ 31 U.S.C. 3553(f)(2)(c)

⁶ Pasztor, Andy, “Why Boeing Beat SpaceX in NASA's Space-Taxi Contest,” *The Wall Street Journal*, October 1, 2014. Accessed at <http://online.wsj.com/articles/why-boeing-beat-spacex-in-nasas-space-taxi-contest-1412207046>

⁷ “NASA exercises Authority to Proceed with Commercial Crew Contracts,” Press Release, NASA Headquarters, October 9, 2014. Accessed at <http://www.nasa.gov/exploration/commercial/crew/>

American astronauts are once again launched on American rockets from American soil. NASA's refusal to provide necessary updates to Congress may unnecessarily impact these efforts.

As we stated previously, NASA is at a crucial period in the development of these programs. Also, Congress and the Science, Space, and Technology Committee have significant oversight responsibilities as laid out by House Rule X and XI.⁸ Your assistance in fully responding to these requests is necessary for the Congress and this Committee to carry out those responsibilities. Please provide responses to all of the previous requests by October 28, 2014.

If you have any questions about this request, please contact Mr. Tom Hammond, Staff Director, Subcommittee on Space, at 202-225-6371.

Sincerely,



Lamar Smith
Chairman



Steven Palazzo
Chairman
Subcommittee on Space

CC: Rep. Eddie Bernice Johnson
Ranking Member

Rep. Donna Edwards
Ranking Member
Subcommittee on Space

⁸ Rules of the House of Representatives, One Hundred Thirteenth Congress, January 3, 2013. Accessible at <http://clerk.house.gov/legislative/house-rules.pdf>