

## DRAFT CHARGING LETTER

Scott W. MacKay  
Vice President and Deputy General Counsel  
Litigation and Compliance  
Lockheed Martin Corporation  
6801 Rockledge Drive  
Bethesda MD 20817

RE: Investigation of Lockheed Martin Sippican – Violations concerning the NULKA Program, a joint project involving the United States Navy and the Royal Australian Navy.

Dear Mr. MacKay:

(1) The Department of State (“Department”) charges the Lockheed Martin Corporation<sup>1</sup>, specifically its subsidiary Lockheed Martin Sippican, (hereafter “Sippican” or “Respondent”) with violations of the Arms Export Control Act (“Act”) and the International Traffic in Arms Regulations (“ITAR” or “Regulations”) in connection with the unauthorized export of classified and unclassified technical data and the unauthorized provision of defense services. Six (6) violations are alleged at this time. The essential facts constituting the alleged provisions are described herein. The Department reserves the right to amend this draft charging letter (See 22 C.F.R. 128.3 (a)), including through a revision, to incorporate additional

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<sup>1</sup> Violations alleged in this draft charging letter predate Lockheed Martin Corporation’s acquisition of Sippican Inc. Lockheed Martin Corporation acquired Sippican Holdings, Inc. in a Stock Purchase Agreement from the Carlyle Group and management in December 2004; Sippican Inc. was a subsidiary of Sippican Holdings, Inc. and became an indirect subsidiary of Lockheed Martin Corporation currently known as Lockheed Martin Sippican, Inc.

charges stemming from the same misconduct of the Respondent in these matters. Please be advised that this is a draft-charging letter to impose debarment or civil penalties pursuant to 22 C.F.R. 128.3.

## PART I – RELEVANT FACTS

### Jurisdictional Requirements:

(2) Lockheed Martin Corporation is a corporation organized under the laws of the State of Maryland.

(3) Sippican Inc. was a corporation organized under the laws of the State of Delaware.

(4) Sippican Inc. was, during the period covered by the offenses set forth herein, engaged in the manufacture and export of defense articles and defense services and was so registered with the Department of State, Directorate of Defense Trade Controls (“DDTC”)<sup>2</sup>, in accordance with Section 38 of the Act and Section 122.1 of the Regulations.

(5) Lockheed Martin Corporation acquired Sippican Inc. in December 2004.

(6) Lockheed Martin Corporation and Sippican Inc. are U.S. persons within the meaning of Section 120.15 of the Regulations and, as such, are subject to the jurisdiction of the United States, in particular with regard to the Act and Regulations.

(7) The NULKA ship-launched anti-missile decoy round (“NULKA”) electronic package is a Category XI(a) defense article and is designated as significant military equipment in Section 121.1 of the Regulations.

(8) Technical data as defined in Section 120.10 for the NULKA decoy electronic package is controlled under Category XI(d) of the Regulations.

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<sup>2</sup> The Office of Defense Trade Controls was “realigned and renamed” the Directorate of Defense Trade Controls in early 2003.

(9) The provision of defense services as defined in Section 120.9 of the Regulations requires Department authorization.

(10) The NULKA decoy is classified SECRET and the technical data for Project NULKA is also classified, some at a level higher than SECRET.

## PART II – BACKGROUND

### MOA/MOU Between the U.S. and Australian Governments

(11) The NULKA decoy is the product of a cooperative program established in 1986 between the United States and Australian Governments under a Memorandum of Agreement (MoA) and subsequent Memorandum of Understanding (MoU) signed in 1996.

(12) Following joint development work by the United States and Australia, a decision was made in 1995 to award a single contract to an Australian company, British Aerospace Australia Limited (now BAE Systems, Australia), for engineering and manufacturing development.

(13) Pursuant to the MoU and a 1997 contract, the Australian Government procures NULKA decoys from BAE Systems Australia (BAES Australia) on behalf of the U.S. Navy. Sippican also has a contract with the U.S. Navy relevant to the NULKA program.

(14) BAES, as a contractor to the U.S. Navy and the Australian Department of Defense, is responsible for development and production of the NULKA's flight control unit, spin control unit, propulsion unit, primary igniter and cartridge.

(15) Sippican is the major subcontractor of BAES Australia, responsible for development and production of the electronic payload. Sippican also provides critical information necessary for integration and operation of the NULKA decoy and is integral to BAES Australia system engineering, failure review/analysis, and developmental efforts.

(16) The contracts require Sippican to share both unclassified and classified technical data with BAES Australia and the Australian Government.

## Licensing Authorizations and Terms

(17) Throughout the life of the overall NULKA program Sippican applied for and received Department export licenses and Technical Assistance Agreements (TAA).

(18) On April 23, 1999, the Department approved TAA 1568-98 for Sippican. This was an agreement between Sippican and BAE Australia to allow Sippican to provide BAE Australia with unclassified technical data relating to the specifications and operational characteristics of the NULKA payload. The Australian Government was not a party to this TAA.

(19) TAA 1568-98 expired on December 31, 2002.

(20) On April 18, 2003, the Department approved TAA 1036-03 to replace TAA 1568-98 authorizing the same scope of work between Sippican and BAE Australia. In addition TAA 1036-03 authorized the transmission of ITAR-controlled technical data classified at the SECRET level. The Australian Government was not a party to this TAA.

(21) On November 24, 2004, the Department approved TAA 1396-04 to replace TAA 1036-03 between Sippican and BAE Australia, authorizing the transmission of ITAR-controlled technical data classified at a level higher than SECRET. The Australian Government was a party to this TAA.

## Violations of Authorizations

(22) On April 30, 2004, Sippican submitted an initial notification of voluntary disclosure to the Department, followed by a formal disclosure on May 13, 2004, indicating that violations of the TAA for development of the MK250 NULKA Training Aid had occurred. The violations were discovered during a company-wide effort to update and strengthen Sippican's export control program. Sippican suspended all exports related to the NULKA program upon discovering the violations in April 2004.

(23) After the expiration of TAA 1568-98 on December 31, 2002 and prior to the April 18, 2003 approval of TAA 1036-03, Sippican had no Department authorization to work with BAE Australia on the NULKA program. During this period between TAAs, Sippican continued to work

with BAES Australia, without authorization from the Department, in violation of Section 127.1(a)(1).

(24) In Sippican's application to the Department for TAA 1036-03, it omitted the fact that for a period of approximately 4 months after the expiration of TAA 1568-98, it had continued to work with BAES Australia without authorization in violation of Section 127.2(a).

(25) Sippican exceeded Proviso 13 of TAA 1036-03 by providing unauthorized technical data, in violation of Section 127.1(a)(4). Proviso 13 reads "Design methodology or manufacturing technology 'know-how' must not be offered, discussed or released. System integration or optimization 'know how' must not be offered, discussed or released. Form, fit, function, integration and interface data, results of trade studies, top level drawings and specifications may be disclosed."

(26) Sippican failed to have in place a Technology Control Plan (TCP) approved by the Defense Security Service and provide this plan to the Department as required by Proviso 9 of TAA 1036-03. This failure prevented Sippican from knowing or determining which plant visits were conducted outside the scope of the authorization. Proviso 9 states, "If foreign nationals will be assigned to Sippican's cleared facilities, a Technology Control Plan (TCP) must be submitted to the Directorate of Defense Trade Controls (DDTC) and the Defense Security Service (DSS) before either the transfer of hardware, software, technical data, or defense services may take place under this agreement."

(27) Sippican's plant visitor records, furnished to the Department during its investigation, identified NULKA program participation by foreign persons who were not authorized plant visits under TAA 1568-98 and TAA 1036-03.

(28) During plant visits, Sippican released ITAR- controlled technical data to foreign persons, including design methodology and manufacturing technology 'know-how,' which was prohibited from release by Proviso 13 of TAA 1036-03. These exports also violated Section 125.5(c) of the ITAR which prohibits the release of technical data related to the design, development, production or manufacturing of a defense article during plant visits without specific authorization from the Department.

(29) Sippican provided technical data to persons not authorized under TAA 1568-98 and TAA 1036-03, in violation of Section 127.1(a)(1). These violations occurred when Australian Government personnel participated in meetings with Sippican and BAE Australia where ITAR- controlled technical data was released.

(30) In response to letters from the Department requesting additional information and clarification, Sippican disclosed that some of the technical data that was transferred without authorization was classified at a level higher than SECRET. The unauthorized transfer occurred in meetings, as well as via secure telephone conversations. The classified technical data that was transferred without the required Department authorizations was passed using approved secure channels.

(31) Sippican stated in their disclosure to the Department that it mistakenly assumed the provisos of TAA 1036-03 were identical to those in the prior TAA 1568-98, which did not contain the same restriction on the transfer of data. Throughout the investigation, Sippican officials further asserted that the ITAR-controlled technical data transferred, including the technical data classified at a level higher than SECRET, was consistent with their contractual obligations with the U.S. Navy. Sippican also failed to recognize that contractual obligations, even with U.S. Government agencies, do not take precedent over the Regulations and the Act.

(32) After numerous requests for additional information and several meetings with Department personnel, Sippican acknowledged that a contract with a U.S. Government Agency is not a substitute for any export authorizations that may be required.

### PART III – LICENSING & REPORTING REQUIREMENTS

(33) Section 123.1 of the Regulations provides that any person who intends to export a defense article, to include technical data, must first obtain the approval of DDTC prior to the export unless the export qualifies for an exemption under the provisions of the Regulations.

(34) Section 125.3 of the Regulations provides that a license or other authorization from the Department is required for the export of classified technical data.

(35) Section 127.1(a)(1) of the Regulations provides that it is unlawful to export or attempt to export from the United States any defense article, including technical data, or to furnish any defense service for which a license or other written approval is required without first obtaining the required license or written approval from DDTC.

(36) Section 127.1(a)(4) of the Regulations provides that it is unlawful to violate any of the terms or conditions of licenses or other written approvals granted pursuant to the Regulations.

#### PART IV - THE CHARGES

##### Charge 1

(37) Respondent violated Section 127.1(a)(4) of the Regulations when it disclosed ITAR-controlled technical data to BAE Australia that exceeded that which was authorized by TAA 1036-03. Specifically, Respondent provided design methodology and manufacturing technology 'know-how', in violation of Proviso 13 of TAA 1036-03.

##### Charge 2

(38) Respondent violated Section 127.1(a)(1) of the Regulations when it continued to export ITAR-controlled technical data and provide defense services during the period of time between the termination of TAA 1568-98 on December 31, 2002 and the approval of TAA 1036-03 on April 18, 2003.

##### Charge 3

(39) Respondent violated Section 127.1 of the Regulations when it provided technical data and defense services to personnel who were not authorized recipients under TAA 1568-98 and TAA 1036-03.

##### Charge 4

(40) Respondent violated Section 127.1(a)(4) of the Regulations when it failed to establish a Defense Security Service approved TCP and failed to

provide a copy to the Department prior to having foreign persons assigned to its facilities as required by Proviso 9 of TAA 1036-03.

Charge 5

(41) Respondent violated Section 125.3 of the Regulations when it transferred classified technical data, including technical data classified at a level above SECRET, without authorization from the Department.

Charge 6

(42) Respondent violated Section 127.2(a) of the Regulations when it failed to notify the Department in its application for TAA 1036-03 that it had continued working with BAE Australia without authorization after TAA 1568-98 expired.

PART V – ADMINISTRATIVE PROCEEDINGS

(45) Pursuant to Part 128 of the Regulations, administrative proceedings are instituted against Respondent for the purpose of obtaining an Order imposing civil administrative sanctions that may include the imposition of debarment and/or civil penalties. The Assistant Secretary for Political-Military Affairs shall determine the appropriate period of debarment, which shall generally be for a period of three years in accordance with Section 127.7 of the Regulations, but in any event will continue until an application for reinstatement is submitted and approved. Civil penalties, not to exceed \$500,000 per violation, may be imposed in accordance with Section 38(e) of the Act and Section 127.10 of the Regulations.

(47) A Respondent has certain rights in such proceedings as described in Part 128 of the Regulations. Currently, this is a draft charging letter; however, in the event you are served with a charging letter you are advised of the following matters. You are required to answer the charging letter within 30 days after service. A failure to answer will be taken as an admission of the truth of the charges. You are entitled to an oral hearing if a written demand for one is filed with the answer or within seven (7) days after service of the answer. You may, if so desired, be represented by counsel of your choosing. The answer, written demand for oral hearing (if

any) and supporting evidence required by Section 128.5(b) shall be in the duplicate and mailed or delivered to Administrative Law Judge Docketing Center, U.S. Coast Guard, 40 South Gay Street, Room 412, Baltimore, MD 21202-4022. A copy shall be simultaneously mailed to the Director of the Office of Defense Trade Controls Compliance, 2401 E. Street, N.W., Washington, DC 20037. If you do not demand an oral hearing, you must transmit your answer within seven (7) days after the service. You must include the original or photocopies of all correspondence, papers, records, affidavits, and other documentary or written evidence having any bearing upon or connection with the matters at issue. Please be advised also that charging letters may be amended from time to time, upon reasonable notice. Furthermore, cases may be settled through a consent agreement, including any time after service of a draft charging letter pursuant to Section 128.11(b).

(48) Be advised that the U.S. Government is free to pursue civil, administrative, and/or criminal enforcement for violations of the Act and the Regulations. The Department of State's decision to pursue one type of enforcement action does not preclude it or any other department or agency of the United States from pursuing another type of enforcement action.

Sincerely,

David C. Trimble  
Director  
Office of Defense Trade Controls Compliance