

Hogan
Lovells

15 November 2010

Ms. Barbara Gehrs
Contracting Officer
836 Aeronautical Systems Group
1755 Eleventh Street, Bldg 570
Wright-Patterson AFB, OH 45433-7404

Subject: Final Report of Review of IFARA Disk Issue

Dear Ms. Gehrs:

The Air Force has requested that we produce a final version of the preliminary report, dated November 4, 2010, that our firm prepared with respect to the receipt of the IFARA results data package from the Air Force on November 1, 2010, the discovery of an apparent mistake in transmission of Boeing data, and mitigation steps taken by EADS NA during the evening of November 1, 2010 and the morning of November 2, 2010.

We have completed our review of the matters discussed in our preliminary report. Upon consideration of all of the information collected both before and after the date of our preliminary report, we have determined that the report previously provided can be considered by the U.S. Air Force to be a final report.

With respect to relevant events occurring after November 2, 2010, we refer you to the statements provided by: Emp. A and Emp. D, dated November 15, 2010, which have been provided by EADS NA under separate cover.

Sincerely,

Outside Counsel for EADS North America



If you have questions regarding this letter, please contact me at

or cell phone

Sincerely,

Contracts Director

CC:

PRELIMINARY REPORT ON REVIEW

IFARA DISK ISSUE

November 4, 2010

This document presents a chronology based on information collected through November 3, 2010 by outside counsel retained by EADS North America to conduct an independent review of the events following the receipt of the IFARA results data package from the U.S. Air Force on November 1, 2010 through the return to the Air Force of the original disks containing the IFARA data on November 2, 2010. Fact finding and analysis of the information collected to date is advanced but not yet complete. Please consider this document to be preliminary in nature and subject to revision.

Monday, November, 1

1. On November 1, at approximately 3:00 pm, the Air Force transferred a package containing two compact disks to Dayton Aerospace, Inc. (DAI) in Dayton, Ohio. Emp. N received the package at Wright-Patterson AFB and conveyed it to DAI's facility where it was inventoried and repackaged for transmittal to EADS-NA Arlington. The Air Force IMT 310 transmitting the package from ASCM/LOS, WPAFB to DAI described the documents as follows: (S) IFARA RESULTS K76B, 1 NOV 10, 1 CD; (S) IFARA RESULTS K30B, 1 NOV 10, 1 CD; package accepted by Emp. O DAI.
2. Emp. P of DAI was assigned as the courier for the package and took a flight arriving at DCA at approximately 8:00 pm.
3. At 8:41 pm, Emp. P arrived at EADS in Rosslyn and was met by Emp. A, Asst. Facility Security Officer (FSO). Others present were Emp. B, Deputy Program Manager, and Emp. C, Director of Analysis and Program Support.
4. At 8:44 pm, Emp. C, Emp. P and Emp. B signed into secured area.¹ Emp. A signed for the package and conducted an inventory. The package contained a transmittal letter from Air Force Contracting Officer, B. Gehrs, Form 310, and 2 CDs marked with markings as indicated on Form 310. The package arrived sealed in DAI envelopes that were addressed to EADS. There were no indications on the external packaging mentioning Boeing or otherwise identifying contents aside from "secret" markings on an internal envelope.
5. Emp. B signed and notated Gehrs' transmittal letter as follows: "Rec'd 2 disks logged in EADS-NA security" w/ signature. There reportedly was handwriting in marker on the two disks which indicated titles of IFARA K30B and IFARA K76B, "secret", "source selection sensitive" and "proprietary data" legends along with FAR citations. The words "Boeing" or "EADS" were not on face of CDs.

¹ "Record of Time of Arrival and Departure from Restricted Area" ("Room log in/out sheet").

6. Emp. P left the secured area at or shortly before 9:00 pm and Emp. B escorted her out of the building and to a taxicab.² Upon Emp. B return, Emp. A asked Emp. B whether he planned to look at the CDs or lock them in a safe. Emp. B indicated that he intended to look at the top level IFARA score that evening so that it could be passed along to EADS management.
7. Emp. A assisted Emp. B in starting the Windows-based computer in the secured room. Because Emp. B did not have an active computer account, Emp. A spent time to create a new user account on the computer. After assigning a log in and new password to Emp. B, Emp. A logged off as administrator for the computer, allowing Emp. B to sign on to his account. According to EADS personnel, the Windows-based computer can only be used to check file index and run the Excel files; it is unable to run CMARPS program files, which are UNIX based.
8. Emp. B inserted the first disk into the Windows-based computer (IFARA RESULTS K30B) and opened a top-level summary Excel file with the overall IFARA score assigned by the Air Force to the EADS proposal. The top-level Excel spreadsheet contained only about 10 rows of information and provided an overall FEV score. According to Emp. B, he just picked up the CD on top and did not pay attention to the handwritten labeling on the CD. Emp. C also was present at the time the first CD was reviewed. After locating the IFARA/FEV score, Emp. C and Emp. B called Emp. F, who is experienced working with the IFARA model. They conveyed the number to Emp. F, briefly discussed the implications, and discussed a plan to inform EADS management.
9. Emp. C and Emp. B agreed on the wording of an e-mail message to EADS management reporting only the top-level EADS number (using a methodology previously discussed so as not to use the actual FEV number in writing in the message).³ The message was transmitted at 9:05 pm.
10. At 9:12 pm, Emp. A sent an e-mail to Emp. L, FSO, forwarding a PDF copy of the signed transmittal letter and Form 310 receipt.⁴
11. Emp. B then took an inventory of the disk (IFARA K30B disk). According to Emp. B, he took a few minutes to scroll down the file structure to see what was on the disk. Emp. B indicated he was not reading the files, but rather looking for signs that the Excel files were intact (not corrupted). In his words, there was "no transfer of knowledge" regarding substantive content of the files. He recalls that he opened at least five Excel files to check for file integrity. As previously noted, he could not open or run the UNIX files on the Windows-based computer he was using.
12. Emp. B then closed out of the first disk and picked up the second disk and inserted it into the Windows-based computer. At this point in time no other EADS personnel were in the room, Emp. B had left the room slightly before 9:05 pm after agreement on the content of the

² Room log in/out sheet is on file.

³ Copy of e-mail message with time stamp 9:05 on file.

⁴ Copy of e-mail on file.

message to EADS management.⁵ Emp. A, as discussed below, was taking care of administrative tasks.

13. The disk file structure on the second disk appeared to display the same file names and appeared to be identical to the first disk. Emp. B initially thought that the disk must be a "back-up" or second copy of the same files. Emp. B then opened the "Summary" file and noticed that it was different in that it was marked "K76B" and had a legend indicating that it was Boeing proprietary data in the footer of the page. As with the first disk, the summary level information on an Excel spreadsheet contained approximately 10 rows, so all of the information was displayed on the screen, including the apparent overall FEV score for Boeing. As soon as Emp. B realized what he was looking at, he closed the file. Emp. B estimates he viewed the file for approximately 15 seconds and then closed it.
14. At 9:22:58 pm, Emp. B began the process of damage control by trying to locate Asst. FSO Emp. A, who had left the room to transmit receipts. Emp. B had to leave the secured area to make the call from his cell phone, but remained at the door to ensure the room remained secure. Emp. A's phone log reflects a "missed call" at 9:22:58 pm from Emp. B. Emp. B then attempted in succession to contact other EADS program personnel (Emp. H, Emp. J, and Emp. I) and received voice mail for all three. According to Emp. B's cell phone history log the 1st call to Emp. H was placed at 21:22 or 9:22.
15. Copy of Form 310 receipt faxed by Emp. A to Emp. L, FSO in Mobile, AL, reflects a time of 9:23 pm. According to Emp. A, the fax machine is on a different floor from the secure area and she was having difficulty getting the fax machine to operate.
16. At approximately 9:24 pm, Emp. A returned to the secured area (not having received Emp. B's earlier message) and Emp. B informed her that he intended to implement "two person security" to seal and secure the disk that apparently contained Boeing data. Emp. B instructed Emp. A that they should not leave one-another's presence until the disk was secured. Emp. B ejected the disk from the computer, looked on the surface of the CD, and for the first time recognized the significance of the K76B annotation, i.e., that it suggested the IFARA data might be Boeing's.
17. Emp. B and Emp. A were present from the point when Emp. B ejected the disk from the computer until the time it subsequently was inserted and locked in the safe (see below). They kept the disk in their joint possession, inserted it in an envelope, and sealed the package using procedures appropriate for classified data. Both signed the tape seals to ensure that it could not be tampered with.
18. At 9:26 pm, Emp. H returned Emp. B's phone call. Emp. B explained the issue and his concern that the Air Force sent EADS the Boeing IFARA results disk. Emp. H instructed Emp. B to contact Emp. G, General Counsel, EADS North America.⁹

⁵ The room log indicates that Emp. C signed out of the facility at 9:30 pm, but this appears to be incorrect. Emp. C said that he did not actually complete the sign out log until Nov 2. The time indicated was his after-the-fact estimate.

⁶ Phone logs on file.

19. At 9:31 pm Emp. B called Emp. G. Emp. B explained the situation and what he and Emp. A already had done to secure the K76B disk. Both Emp. B and Emp. G cell phone call histories indicate this call was placed/received at 21:31 or 9:31.
20. At 9:36 pm, Emp. G called counsel at Hogan Lovells US LLP to confer on mitigation steps. The discussion addressed securing the information, immediate notification to the contracting officer, and the conduct of an investigation after data was secured and Air Force notified.⁷
21. At approximately 9:43 pm, Emp. G called Emp. B. In addition to confirming what Emp. B already had done, Emp. B was asked to send e-mail notification immediately to the Air Force contracting officer.
22. Shortly thereafter, Emp. A and Emp. B shut down the Windows-based computer in the secure area (the UNIX computer was not turned on/used). They removed the hard drive from the Windows-based computer. Then they brought the K76B disk (previously sealed), the K30B disk, and the hard drive to the classified data safe.
23. At approximately 9:55 pm, the safe used to secure these materials was closed by Emp. A. The K30B disk was put into the top drawer of the safe where other classified "working" materials were located. The sealed K76B disk was put in a separate lower drawer so that it would not be accessed by others using the safe.⁸ (Per Emp. B, no one other than a security officer is authorized to open a sealed envelope.) Emp. B and Emp. A also signed out of secured area.⁹
24. At approximately 10:00 pm, Emp. A departed premises.
25. At 10:11:58 pm, Emp. B sent e-mail message to Air Force: "Barbara, EADS-NA received a package this evening containing 2 discs, both SECRET NOFORN. One of the discs contains Boeing proprietary data. In accordance with good practice, I immediately sequestered the disc and instituted 2-man custody. A security specialist and I placed the disc in an envelope, sealed and taped the envelope, and signed/initialed all tape seams. The disc is currently locked in a secure safe in our secure area. We await your instructions." Thereafter, Emp. B departed the premises.

Tuesday, November 2

26. On November 2, 5:10 am, Air Force contracting officer, Gehrs, sent message to Emp. B indicating that she would call when she arrived in her office. Emp. B responded at 5:18 am by e-mail acknowledging her message.

⁷ Counsel's phone log indicates the call concluded at 21:43:42.

⁸ Copy of the log for the safe indicates that Emp. A opened the safe at 20:45 and closed the safe at 21:54; Emp. B signed as having "checked" the safe at "22:55", however, this was an error; according to both Emp. A and Emp. B, the correct time was 21:55 or 9:55PM.

⁹ Room log in/out sheet on file.

27. At 6:30 am, Emp. D, Director, Business Development (Tanker), Air Force Programs, signed into the secured area.¹⁰
28. At 6:35 am, Emp. D opened the safe to see if IFARA information was inside and observed one sealed package that he assumed contained the IFARA data received from the Air Force (because he felt a CD inside). Since he was not sure what was in the package, Emp. D closed the safe and asked Emp. B via e-mail if it was the IFARA data. Emp. D was advised to wait for Emp. A to retrieve the data.¹¹
29. At 6:45 am, Emp. A arrived at safe and retrieved the K30B disk.
30. At 7:00 am, Emp. E and Emp. F, both consultants retained by EADS to assist on IFARA modeling and related matters, signed into secure area. Emp. E and Emp. F download the K30B disk onto the hard drives of both the Windows-based PC and UNIX-based Sun computer. Per Emp. B neither Emp. E nor Emp. F were told about the discovery of the KC-76B disk on Nov. 1.
31. Between approximately 7:30 – 8:30 am, Excel files could be immediately accessed by Emp. F and Emp. E, but problems were encountered getting the CMARPS files operating on the UNIX computer. EADS NA T personnel were called to assist.
32. At 7:40 am, Emp. B signed into secure area for 10 minutes to see what was happening. When he arrived, Emp. A and Emp. D were in the room. Emp. B did not interrupt or participate in the activities on-going in the room.¹²
33. At 8:15 am EST [7:15 am CST], Air Force CO Gehrs (after reportedly trying to reach Emp. B) called Emp. J of EADS. Gehrs verbally instructed that all data be returned immediately with a Contracts Letter with a description of the steps EADS NA took when the error was understood. Emp. J was in his car on the way to his office. He then notified Emp. H, tanker program manager, of the call. At approximately, 8:45 am, Emp. H, in turn, notified EADS management of the call.
34. At approximately 8:30 am, the technical difficulties relating to the UNIX files were resolved and they could be run on secure Sun [Unix-based] computer. Emp. F and Emp. E began to review data and mission scenarios supporting the FEV score on disk K30B.
35. At approximately 8:55 am, Emp. A entered secured area and indicated that the original disk needed to be returned to the Air Force. She was told the original K30B disk had been returned to the safe. She then retrieved both original disks (K30B and K76B disk sealed on Nov. 1), packaged them for shipment, and held them in her possession until handed off to Emp. D for special courier at approximately 12 noon.
36. Between approximately 8:50 am and 9:30 am, a limited review of the K30B data provided by the Air Force took place. Emp. F and Emp. E reviewed the files on the K30B disk including the Air Force IFARA FEV calculation and the employment scenario EXCEL spreadsheet. In

¹⁰ Room log in/out sheet on file.

¹¹ Room log in/out sheet on file.

¹² Room log in/out sheet on file.

view of circumstances, EADS-NA believes that the Air Force should be aware that

Emp. F and Emp. E had downloaded the CMARPS files and had begun to cross check ramp fuel loads, fuel weights, and MOG values. However, as noted below, they were directed to cease all review actions at 9:30 am. During the approximately 40 minutes EADS-NA personnel worked with the Air Force-provided files, Emp. F and Emp. E were unable to determine an explanation for these unexpected observations. [After the data files are returned to EADS-NA, it intends to pursue these issues with the Air Force per the terms and conditions set forth in the RFP.]

37. At 9:16 am [Eastern], Emp. J sent a message to several persons on the EADS tanker team in Mobile, AL and Arlington, VA: "At 7:15 Central [8:15 Eastern] this morning I received a call from Barbara Gehrs and Lt. Col. Wells. Ms. Gehrs indicated that she had tried unsuccessfully to call Emp. B. She asked if I was aware of the IFARA delivery situation. I told her that I had received the e-mails on the topic (below) but had not yet spoken to anyone. Ms. Gehrs gave two Contracting Officer directions:
1. EADS NA to return ALL material received in the 1 November delivery
 2. EADS NA to respond to USAF by letter with a full description of the circumstances"¹³
38. Approximately 9:30 am, personnel in secured area were informed that all analysis of the IFARA data received from the Air Force should cease immediately. They were told that there appeared to be an anomaly in the data and that the Air Force had requested return of all data. Personnel in the secured room closed the IFARA model containing data supplied by the Air Force, but did not immediately cease using the computers (running other non-Air Force files).
39. At about 9:52 am, Legal instructed personnel to cease use of the two computers in the secured area and to keep the computers running in order to best preserve any metadata for forensic analysis. Outside counsel was instructed to locate a forensic computer specialist with security clearance and capability of preserving metadata and address files remaining on secure computers.
40. At or about 10:00, Emp. J and Emp. H called the Air Force for clarification and to inform the Air Force that EADS had made a copy of the data on the K30B disk (only). They were told that EADS may keep a copy of the K30B disk data, but must send back the original disks. After that call, Emp. H instructed Emp. J to call Gehrs to make sure the Air Force understood that the EADS copy was on a computer hard drive and not a "disk" [i.e., CD].
41. At about 10:04 am, EADS requested shipping instructions by e-mail.

¹³ Emp. J indicated he was in the car when Gehrs called him and it took him time to get to the office and draft the message.

42. At approximately 11:00 am, Emp. J and Gehrs had another telephone call regarding the logistics for return of the material (i.e., exact address). General Bogdan and perhaps others were in the room with Gehrs. Emp. J told Gehrs that he wanted to make sure the Air Force understood that EADS made a copy of the files from the K30B onto its hard drive. Gehrs acknowledged this information and expressed no objection. Emp. J also was informed that the Air Force independently was investigating the shipment that went to Boeing to determine whether similar errors were made.
43. At 12:00 noon, Emp. D departed for Dayton, Ohio with original disks (K30B and K76B).
44. At 12:07, pm, the secured computers had been left running for two hours, but could not be left running in the secured room without cleared personnel present. Emp. B directed that the computers be shut down and their hard drives be secured in the safe.
45. At 12:17 pm, the hard drives were secured in the safe.¹⁴ EADS counsel directed that the drives remain in the safe until further notice.
46. At 12:30 pm, interviews of personnel commenced and continued through the day. Arrangements were made to clear the forensic expert for access to EADS NA's secured facility. [On Nov. 3, Air Force asked EADS to hold off on review of the hard drives by the outside computer forensics expert.]
47. At 5:54 pm, EADS sent the following e-mail message to Air Force CO Gehrs:

We opened the package containing your transmittal letter (subject above) and two disks (the "Information") received last night around 9:00 p.m. after it was received by courier at our offices in Arlington, VA. After opening the files, EADS NA discovered one of the disks appeared to contain competitor proprietary data. The EADS employee who made this discovery promptly notified me and we immediately sought the advice [of] our outside counsel from the Hogan Lovells law firm in DC. We also retained Hogan Lovells to conduct an independent review of the situation. As previously reported, the disk that appeared to contain competitor information was sealed and secured, and our deputy program manager informed you of that situation last night. As we had no reason to believe that there was a problem with the second disk, that disk was not secured until approximately 9:30 this morning when we received instructions to return both disks. Per your request, both of the original disks received from the Air Force have been returned by special courier to the Air Force. We also have secured the hard drives from the computers used to view the disks and will have them reviewed by forensic computer experts with appropriate security clearances to ensure that all data is removed. We continue to investigate the circumstances and collect the facts, and we anticipate that this review will be completed soon. At this point, we believe the incident was properly handled by our personnel so as to mitigate the

¹⁴ Safe log in/out sheet on file.

situation. As I am sure you appreciate, it is our intent to provide to the Air Force a complete and accurate account of events. Accordingly, we appreciate your patience while we complete our review.

48. At 7:06 pm, EADS assigned Emp. B to administrative account and suspended his activity on program matters for two days pending feedback from Air Force on preliminary investigation findings.¹⁵

¹⁵ Emp. B, was not engaged substantively on program activities on November 2 and was temporarily re-assigned to an administrative account starting close of business November 2.