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October 20, 2022

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
2703 Martin Luther King Jr Avenue, SE
Washington, D.C. 20593

Dear Secretary Mayorkas,

I would like to thank you for your continued and timely response to my previous letters regarding Austal USA and the Offshore Patrol Cutter Stage 2 (OPC) program. It has come to my attention that one of these letters[1] was cited by the United States Coast Guard (USCG) as the reason it has refused to continue to cooperate with the Government Accountability Office (GAO) in the ongoing Eastern Shipbuilding Group, Inc. (ESG) protest proceedings. This is deeply troubling.

On October 3, 2022, attorneys from the USCG Office of Procurement Law transmitted a letter to the GAO stating that the USCG would be ending its participation in the ongoing protest proceedings. The letter was in response to the GAO's offer for the USCG to participate in outcome prediction Alternative Dispute Resolution (ADR). The USCG cited my letter to you, specifically the ethical issue raised therein, as what seems to be justification why the USCG "could not seriously consider taking corrective action following the outcome of the prediction ADR… [and] is therefore unwilling to participate". You can imagine that I am very perplexed by the lack of candor and communication by the USCG prior to this decision.

Further, in your September 16, 2022 response to my above-mentioned letter, you explained that "[t]he Department [of Homeland Security] respects the right of all bidders to challenge the award of a federal contract and wholly supports GAO's role in providing an objective, independent, and impartial forum for the resolution of disputes concerning the award of federal contracts." I am curious as to how GAO will provide an objective, independent, and impartial forum when one side of the dispute has decided not to participate.

Ultimately, what concerns me is that this action by the USCG appears to set a dangerous precedent. Businesses should not fear reprisal from the government by contacting their elected representatives when they uncover serious ethical issues in their dealings with the government. The USCG's refusal to continue to participate in the OPC protest proceedings because ESG

[1] It is unclear which of my letters is specifically referenced in the USCG-GAO letter. I have made the assumption that my letter to you dated July 26, 2022 is the above-referenced letter. This assumption is based on the descriptive information contained in the USCG-GAO letter "calling for an investigation by the Office of Inspector General" which follows most closely with my 7/26/22 letter.

reached out to me after they uncovered possible ethical violations in the OPC bid process is such a precedent.

I respectfully request the following information:

1. Please identify which of my letters is referenced in the October 3, 2022 letter from the USCG to GAO.

2. Please provide an explanation as to how my above referenced letter will influence the Government in determining further action following GAO's written decision.

3. Please provide an explanation how the USCG came to the decision that my engagement on this issue warranted ending their participation in the protest dispute.

Again, thank you for your continued cooperation in this matter. Should you have any follow-up questions, please contact Warner Allison (warner.allison@mail.house.gov) in my office.

Respectfully,

Neal P. Dunn, M.D.
Member of Congress

cc: Admiral Linda Fagan, Commandant, United States Coast Guard