

# CRS Report for Congress

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## VXX Presidential Helicopter: Background and Issues for Congress

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### Summary

On January 28, 2005, Navy officials announced the award of the VXX helicopter contract to Lockheed Martin Corp. Critics of the award have raised concerns about the effect on the U.S. defense industrial base, U.S. trade, and whether Buy American statutes apply. Some question whether the competition was fair. Legislation has been introduced regarding some of these issues. This report will be updated as warranted.

### Background

On January 28, 2005, Assistant Secretary of the Navy John Young announced that Lockheed Martin Corp. had won a competition against Sikorsky Aircraft Corp. to develop the VXX presidential helicopter. Estimated at \$6.1 billion, this program will replace the today's 13 *VH-3A/D* and eight *VH-60N* helicopters. Approximately \$1.6 billion has been budgeted since FY2004 to begin buying 23 helicopters. Initial operational capability is planned for 2009. Some have criticized the award to purchase Lockheed's *US101*, partly because the winning team includes foreign companies (from the United Kingdom and Italy). Sikorsky had stated it would build the VXX entirely in the United States. Others say that Lockheed Martin won the competition despite Sikorsky's higher performance scores.<sup>1</sup> Some say that Sikorsky's *S-92* was a superior aircraft, but that the Department of Defense (DOD) awarded the contract to Lockheed Martin's international team to reward Italy and the UK for their support of the war in Iraq. DOD denies this claim.

### Potential Issues for Congress

On February 1, 2005, Representative Rosa DeLauro introduced H.R. 459 "Marine One Made in American Act." On March 1, 2005 Sen Lieberman introduced a related bill, S. 486. As Congress considers these bills, and potentially other legislation on the VXX

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<sup>1</sup> Michael Bruno, "After Heated Briefing, Lawmakers Vow to Challenge Navy Over VXX," *Aerospace Daily & Defense Report*, Feb. 11, 2005.

program, several issues are likely to be raised. First, whether the competition was held fairly, as DOD asserts, or whether there were procedural irregularities, as critics contend. Second, the possible impact the decision might have on the U.S. defense industrial base. Third, and relatedly, the effect the decision could have on U.S. trade. The final issue pertains to compliance with existing Buy American statutes.

**Fairness of the Competition.** In a January 28 news briefing, Navy officials stated that the VXX contract was awarded on a “best value” basis, and that consistent with government rules, the proposals were evaluated solely on “technical, past performance, experience, and cost factors.”<sup>2</sup> Some have questioned, however, the relative weight placed on these factors. A related question has been whether the VXX needs to be procured on the time schedule DOD desires.

**Urgency.** Government officials have consistently maintained that principally owing to post-September 11<sup>th</sup> security issues, replacing the current Marine One fleet is urgent. It has been reported that White House officials urged DOD to accelerate the VXX program, proposing an initial operational capability by 2007.<sup>3</sup> Some argue that by responding to this perceived urgency with an aggressive acquisition schedule, DOD has pursued a strategy that is unnecessarily risky. Navy Assistant Secretary John Young commented on the risk associated with pursuing the VXX on an urgent time line: “The requirements of the program are very demanding. The volume of work to be completed in this program is substantial....However, the need to improve the capability and security level provided to the president is urgent and demands that we move expeditiously.”<sup>4</sup> DOD’s Director of Operational Test and Evaluation reportedly disapproved of the VXX schedule, calling it overly aggressive and inconsistent with “fly before buy principles.” He reportedly found that the VXX test schedule was “not executable.”<sup>5</sup>

Some believe that one outcome of this schedule was to make the competition more favorable to Lockheed Martin and less favorable to Sikorsky. A Navy spokesman was quoted as saying “The Lockheed streamlining proposal was selected because it was judged more likely to meet these government requirements on schedule, with lesser risk, and at a lower cost....we can’t let the traditional acquisition process impede the need to meet the President’s security requirements now.”<sup>6</sup>

Critics note that DOD has also invoked post-September 11<sup>th</sup> security concerns to justify other programs that deviated from the traditional acquisition process, such as the proposed lease of 100 KC-767 tankers. Opponents of the contract award also argue that the vast majority of presidential helicopter flights are short (e.g. from the White House to Andrews AFB, or to Camp David), and take place in very secure airspace. From their perspective, regular combat air patrols by F-16 aircraft, and standard defensive

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<sup>2</sup> DOD News Briefing, John Young, Assistant Secretary of the Navy for Research, Development and Acquisition and Thomas Laux, Program Executive Officer, Jan. 28, 2005 - 5:01 p.m.

<sup>3</sup> Christopher Castelli, “Facing Criticism From Christie, Young Defends Rapid VXX Schedule,” *Inside the Navy*, Feb. 7, 2005.

<sup>4</sup> DOD News Briefing, op. cit.

<sup>5</sup> Castelli, op.cit.

<sup>6</sup> DOD News Briefing, op. cit.

countermeasures should provide the President with adequate security regardless of the helicopter flown. If improvements to the President's security are urgently needed, critics ask, what is being done to improve security until the VXX is fielded?

Supporters of the Navy's position are likely to argue that a key lesson of the terrorist attacks of September 11<sup>th</sup> is that tomorrow's security challenges are difficult to predict and that the President urgently needs more capability to address scenarios outside the norm. Also, some argue, the consequences of not providing the President with improved capabilities are potentially dire; such as ineffective crisis response, or even a discontinuity of government. Therefore, they maintain that an aggressive schedule is warranted.

**Technical Factors.** Critics have stated that the VXX acquisition team may have placed too little emphasis on safety, and too much emphasis on the helicopter's cabin area features, which they believe may have biased the competition in Lockheed Martin's favor.

Opponents of the contract award maintain that safety should be the highest priority for the President's helicopter. According to Sikorsky officials, safety considerations were valued less in the competition however, than other factors, such as cabin size.<sup>7</sup> According to press reports, Lockheed Martin's helicopter has experienced five "Class A" mishaps; the most serious kind of aviation accident. Sikorsky's helicopter has reportedly never experienced a Class A mishap. Sikorsky's S-92 has been FAA certified more recently than the EH-101, and therefore has had to comply with higher safety standards. Sikorsky officials tout S-92 safety features, such as fuel tanks external to the cabin area, that they say the US101 can't match. Lockheed Martin disputes claims that the US101 is less safe than the S-92. Unlike the S-92, they say, theirs is a battle tested helicopter designed to military specifications. Further, they say, US101 is safer than the S-92 because it has three engines rather than two. In the January 28 news briefing, however, Navy officials said they had no data supporting the argument that helicopters with three engines are safer than those with two. A helicopter with three engines will cost more to operate, however, than a helicopter with two. Some estimate the H-92's hourly direct maintenance cost at \$900.00 and the EH-101's at \$1,500.00.<sup>8</sup>

Industry sources agree that the US101's larger cabin gave it a prominent advantage over the S-92,<sup>9</sup> but Sikorsky supporters say that too much weight was placed on cabin size, (60% of the technical score), unfairly favoring Lockheed Martin. The S-92 met the VXX program's cabin size requirement, and will have a larger cabin than the helicopters it will replace. Sikorsky supporters say that any volume in excess of the requirement is, by definition, not required. Considering that the amount of time that the President will spend in the helicopter is typically measured in minutes, rather than hours, some have asked whether too much emphasis was placed on the cabin size decision criterion. At the January 28 news briefing, Navy officials appear to have sent differing messages regarding the importance of size in their decision. John Young said that "both cabins met the requirements, so that wasn't a total discriminating factor." Program Executive Officer

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<sup>7</sup> Meeting with CRS, Feb. 17, 2005.

<sup>8</sup> Conklin & de Decker, *The Aircraft Cost Evaluator*, Spring 2003. [<http://www.conklindd.com/cgi-bin/softcart.exe/?E+scstore>]. (2005 figure for EH-101 \$1,617. H-92 figure unavailable.)

<sup>9</sup> Lockheed Martin and Sikorsky meetings with CRS, Sept. 28, 2004 and Feb. 17, 2005.

Thomas Laux, however, said that “the overall size of the 101 clearly was a factor in terms of their capabilities.”<sup>10</sup> Subsequent to the January 28 press conference, Navy officials have denied that cabin size received any more weight in the VXX decision than other technical factors, including safety.

**U.S. Defense Industrial Base Issues.** The VXX decision has raised concerns among the critics related to the U.S. industrial base such as jobs, and competitiveness.

**Jobs Created or Lost Within the United States.** The net effect of the VXX award on the number of jobs in the U.S. helicopter industry is currently unclear. Various estimates put the number of *new jobs* created by the *US101* program at approximately 1,050, in New York and Texas. If Sikorsky were to make the VXX, it may be that fewer new jobs would be created in the United States because Sikorsky’s *S-92* is already primarily built in the United States. (The *EH-101*, upon which the *US101* will be built, is today primarily built in Europe.) However, a VXX award to Sikorsky may have created additional U.S. jobs because Sikorsky said it planned to eliminate foreign suppliers and build the VXX entirely in the United States. It is unclear how many U.S. jobs may be affected, if any, due to reduced orders for the *S-92* following the VXX decision. Some challenge the quality of the jobs created by the *US101* program. The *US101* program will send off-shore, *S-92* supporters say, key aircraft design, manufacture and support activities. The new jobs created by the *US101*, they say, will be assembly line jobs that will do little to sustain or nurture the U.S. industrial base.<sup>11</sup>

**Future Competitiveness.** One VXX issue frequently discussed is the potential for the award of this contract to influence other military helicopter competitions. Several new military helicopter contracts are expected to be awarded in the near term — potentially up to \$40 billion in value. Prominent among these new programs is the Air Force’s 132 Personnel Recovery Vehicles (*PRV*) which will replace its *HH-60G* combat search and rescue helicopters. Sikorsky and its supporters say that the VXX contract could harm the future competitiveness of the U.S. helicopter industry. *S-92* supporters fear that the VXX will form the basis for the next generation of U.S. medium helicopters; just as *H-60* helicopters formed the basis for the last generation. They also say that the *S-92* is better positioned than Lockheed’s helicopter to compete internationally, due in part to lower costs. However, the VXX contract is a prestigious award. By choosing a helicopter that was designed and engineered by Europeans, Sikorsky supporters argue, the U.S. Navy is making a vote of “no confidence” in the U.S. helicopter industry.

Lockheed supporters dispute claims about the negative effects the VXX award will have on the U.S. helicopter industry. In his January 28 briefing, *US101* supporters note, Assistant Secretary of the Navy John Young argued that the design and performance demands of presidential transportation are “a fairly unique opportunity ... very different” from other military requirements. There is no guarantee that the winner of the VXX helicopter competition will win future military helicopter contracts, they say. Besides, it is argued, DOD’s *Industrial Capabilities Report to Congress* found no major industrial

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<sup>10</sup> *DOD News Briefing*, op. cit.

<sup>11</sup> Dave Ahearn, “Marine One and Buy American: A Debate,” *Defense Today*, Nov. 10, 1004.

base problems, and disputes claims that the U.S. is too dependent on foreign suppliers.<sup>12</sup> S-92 supporters note, however, that requirements for military helicopters are fluid. The requirements for the Personnel Recovery Vehicle, for instance, recently have grown. Thus, it cannot be asserted that the VXX contract is unique, since future helicopter requirements could grow to mirror VXX requirements. The VXX award will likely be a boon for Lockheed's future helicopter business, they argue. Others, argue that Sikorsky is a "shoo in" to win the PRV award, because, after canceling the RAH-66 Comanche helicopter, DOD would not risk Sikorsky's future by denying it the PRV contract.<sup>13</sup>

**"Winner Takes All" Contract.** Like many other military procurements, only one company was awarded a contract for Marine One. While funding two or more contracts typically costs more than funding one, in some instances increased cost has been justified to protect the industrial base. Some argue, for example, that the Joint Strike Fighter (JSF) program should have been, and the DDX destroyer program should be, awarded to two contractors to maintain diversity and competition in these fields. Some have suggested that awarding the VXX contract on a shared basis between the two competitors would have helped preserve the U.S. defense industrial base. There may be, however, a qualitative difference between the destroyer and tactical manned fighter markets and the helicopter market. Where the JSF contract was seen as "the last manned fighter program," and the DDX occupies a unique niche in the shipbuilding industry, the helicopter industry has several companies competing in a variety of markets. Sikorsky officials have noted that they hold orders for the delivery of 59 S-92 helicopters with options for another 30.<sup>14</sup>

**Trade Issues<sup>15</sup>.**Some suggest that the VXX decision may signal growing transatlantic industrial cooperation, and a more open DOD procurement policy concerning foreign suppliers. Only 4.1% of DOD procurement went to foreign contractors in 2003. On the other hand, this decision could spur some in Congress to support additional restrictions on foreign defense suppliers. Some observers state that if European suppliers are deemed good enough to make the President's helicopter, then the rest of DOD may be more inclined to consider foreign bids for a range of military contracts. Doing so, it could be argued, may make economic sense as foreign contractors increase the supply of contract bids, presenting opportunities to keep down procurement costs, and to take advantage of technology found in a global marketplace. It has been asserted that a more open sourcing policy for foreign suppliers could also make foreign governments more willing to buy from U.S. defense suppliers.

Others suggest that the decision could foster a backlash against a more open policy for defense procurement. Combined with the record U.S. trade deficit in 2004 and the possible European Union's lifting of its arms embargo on China, some worry that the United States could become more dependent on foreign suppliers. Others argue that the U.S. taxpayers who foot the bill for the strongest military in the world should have the

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<sup>12</sup> Sharon Weinberger, "Annual Report Paints Rosy Picture of Defense Industrial Base," *Defense Daily*, Mar. 28, 2005.

<sup>13</sup> Robert Wall, "Sea Change," *Aviation Week & Space Technology*, Feb. 7, 2005.

<sup>14</sup> Andrew Doyle, "Sikorsky Shrugs Off VXX Shock," *Flight International*, Feb. 8, 2005.

<sup>15</sup> This section written by Raymond J. Ahearn, Specialist in Trade Relations, Foreign Affairs, Defense, & Trade Division.

right to supply it. Still others raise concerns about the risk of losing proprietary technology by shipping sensitive blueprints overseas and the need to assure tight security for offshore manufacturing and assembly (e.g. “Yankee White” security clearances).

**Buy American Issues**<sup>16</sup>. The VXX procurement is subject to two domestic content statutes, The Buy American Act<sup>17</sup> and the Berry Amendment.<sup>18</sup> The Buy American Act attempts to protect domestic labor by providing a preference for American goods in government purchases. In determining what are American goods, the place of mining, production, or manufacture is controlling. The nationality of the contractor is not considered.<sup>19</sup> The domestic preference requirement of the act is broad in scope. The federal government is required to buy domestic “articles, materials, and supplies” when they are acquired for public use unless a specific exemption applies.<sup>20</sup> The test of origin is applied to supplies delivered to the government as “end products.”<sup>21</sup> Manufactured articles are considered domestic if they have been manufactured in the United States from components, “substantially all” of which have been mined, produced, or manufactured in the United States.<sup>22</sup> Substantially all means that the cost of foreign components does not exceed 50% of the cost of all components.<sup>23</sup>

There are exceptions to the Buy American Act. The act does not apply (1) where its application would be inconsistent with the public interest or unreasonable in cost, (2) to procurement of products for use outside the United States, (3) to products not produced or manufactured in the United States in sufficient and reasonably available commercial quantities and of satisfactory quality,<sup>24</sup> or (4) to procurements under \$2,500.<sup>25</sup> The Berry Amendment requires that 100% of food, clothing, fabrics, specialty metals, and hand or measuring tools in a DOD procurement be of domestic origin.<sup>26</sup> Any VXX fabrics or specialty metals would have to be of 100% domestic origin. The cost of the fabric and specialty metal components are used in the Buy American 50+% determination.

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<sup>16</sup> This section written by John R. Luckey, Legislative Attorney, American Law Division.

<sup>17</sup> 41 U.S.C. §§ 10a through 10d. For more on the Buy American Act, see CRS Report 97-765, *The Buy American Act: Requiring Government Procurements to Come from Domestic Sources*.

<sup>18</sup> 10 U.S.C. § 2533a. For more on the Berry Amendment, see CRS Report RL31236, *The Berry Amendment: Requiring Defense Procurement To Come From Domestic Sources*.

<sup>19</sup> See, E-Systems, Inc., 61 Comp. Gen. 431 (1982); and Patterson Pump Co., B-200165, 80-2 CPD ¶ 453 (1980).

<sup>20</sup> 41 U.S.C. §§ 10a & 10b. The act applies to leases as well as purchases. National Office Equipment Co., B-191003, 78-1 CPD ¶ 413 (1978).

<sup>21</sup> FAR § 25.101.

<sup>22</sup> 41 U.S.C. §§ 10a & 10b. This test is only applied to end products or construction materials. A component is of domestic origin if it was manufactured in the United States, regardless of where its components were made. Hamilton Watch Co., B-179939, 74-1 CPD ¶ 306 (1974).

<sup>23</sup> FAR § 25.101; and E.O. 10582, 19 Fed. Reg. 8723 (1954).

<sup>24</sup> 41 U.S.C. § 10a.

<sup>25</sup> Pub. L. No. 103-355, 108 Stat. 3346-7, 103<sup>rd</sup> Cong., 2<sup>nd</sup> Sess. (1994) codified at 41 U.S.C. 10a.

<sup>26</sup> 10 U.S.C. § 2533a. Exceptions are contained in subsections (c) through (I).