



DEPARTMENT OF DEFENSE

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The below is an addendum to the May 3, 2019 Department of Defense (DoD) response to Senator Grassley's letter regarding the DoD's general purpose cloud initiative, known as the Joint Enterprise Defense Infrastructure (JEDI) Cloud.

- 1. "Cloud computing and storage provide the necessary foundation to adopt modern software practices and emerging technologies, such as artificial Intelligence (AI)." This implies that the current cloud system is not adequate as a foundation. Why is that? How does Jedi create a superior foundation? Can the current systems no be modernized?**

There are fundamental differences in the way cloud computing stores and processes data that enable high compute efficiency that cannot be accomplished with older technology. Current systems can either be modernized to run in cloud computing environments or be totally rebuilt, depending on the age and other technical factors. By leveraging commercial cloud computing environments for hosting systems and applications, DoD is able to stay current with new technology, while eliminating up-front investment for traditional hardware infrastructure. Additionally, by leveraging commercial cloud services DoD inherits innovation from one of the most hotly contested areas of industry in which investment in new capability and cyber security far outstrips available Government spending.

Modern software practices require consistency in the underlying infrastructure in order to allow for continuous development, automation, and speed. Emerging technologies, such as machine learning (ML) and artificial intelligence (AI), require an enormous amount of elastic, auto-scalable compute and storage to work. Architecting on-premise, data center solutions to address the needs of modern software practices and emerging technologies is technically challenging, if even possible, and often cost prohibitive.

Cloud solutions currently being used across DoD are uncoordinated and disparate, which creates barriers to optimizing data and applying consistent modern software practices across the Department. JEDI addresses the foundational needs to enable modern software practices and emerging technologies, such as AI, in a more cost effective manner than attempting to undertake the technically complex operation of modernizing data centers.

- 2. What internal policies does the Department have in place to ensure that Requests for Procurement [sic] (RFP) and subsequent government contracts are not drafted so that they are tailored to match the specific technical capabilities of a particular company**

when that company does not qualify for a sole source contract as per Federal Acquisition Regulation (FAR) 6.101 and FAR 3.301? Were these policies adhered to in this case? What evidence can you share that would provide assurances to this effect? Is it OSDs position that ALL regulations were followed?

The DoD acquisition process is governed by numerous statutory and policy requirements that ensure competition in contracting. The process includes multiple levels of internal review and oversight including legal review of requirements to ensure procurements are not tailored to a specific vendor. Appropriate legal review occurred in addition to Department acquisition authorities reviewing the JEDI requirements prior to finalization and release of the RFP on July 26, 2018. DoD maintains, and GAO found in their November 14, 2018 decision, that all regulations were followed in the creation of the JEDI RFP. More than one company satisfied the DoD criteria and are actively competing for the award.

3. Please provide copies of current Department policy and procedures that address potential conflicts of interest in the contracting process. Please include any policies and procedures that address roles and responsibilities in drafting contracts and requests for proposals, and in reviewing those processes for potential conflicts.

As stated in our original response, there are a host of ethics laws and regulations, applicable to all Executive Branch agencies, that are designed to identify and avoid potential conflicts of interest, including the conflicts of interest laws at 18 U.S.C. §§ 207 and 208, the financial disclosure reporting requirements at 5 U.S.C. app. 101, et. seq., and implementing ethics regulations at 5 C.F.R. Chapter XVI, Subchapter B and FAR) at 48 C.F.R. Part 3. In addition to these provisions, DoD has implemented supplemental requirements in the Joint Ethics Regulation, DoD 5500.07R, and the DFARS, 48 C.F.R. Part 203. Individuals who meet the statutory and/or regulatory filing criteria are required to submit financial disclosure reports setting forth their financial interests and affiliations, which are reviewed by supervisors and ethics counsel. These individuals are required to receive ethics training annually.

4. Under FAR 1.602-2, the contracting officer must ensure that all contractors receive impartial, fair, and equitable treatment. Further, under FAR 3.104-7, the contracting officer must investigate a violation or possible violation of the procurement integrity rules and determine if the reported violation or possible violation has any impact on the pending award. When and how often are these documents reviewed and checked for accuracy?

Individuals who meet the statutory and/or regulatory filing criteria are required to submit financial disclosure reports (*i.e.*, SF 450 and SF 278), upon entering new positions and annually thereafter, setting forth their financial interests and affiliations. Financial disclosure reports are reviewed by supervisors and ethics counsel. Filers are required to receive ethics training annually. In addition, DoD requires that all Defense Acquisition Workforce personnel receive annual ethics training. Additionally, individuals participating in a source selection process are required to disclose their financial interests and affiliations and receive procurement integrity

training prior to participating in the source selection process. Employees are responsible for disclosing any potential conflicts, and any falsification of information or failure to file or report required information may result in disciplinary action or criminal prosecution. The forms and procedures articulated above apply to all Federal agencies and are not unique to DoD.

5. The department ALWAYS adheres to all acquisition and ethics laws? Under current laws, are former employees of ‘Company A’ now working for DOD allowed to help design a contract that that ‘Company A’ will likely bid on? When? What if that former employee that is now working for DOD has already accepted a position back with ‘Company A’?

As stated in Answer 2 above, there are a host of ethics laws and regulations designed to identify and avoid potential conflicts of interest. These laws and regulations govern both criminal and civil conflict of interest matters and prohibit parties from participating in matters where they have a real or imputed interest. All DoD employees are required to take annual ethics training, which includes review of potential scenarios to guide employees. Employees are strongly advised to consult with ethics counselors, who are specially trained to apply the ethics rules, whenever a question arises. Ethics advice is tailored to the unique facts and circumstances of the situation. Failure to adhere to either self-reporting guidelines or ethics counsel guidance are referred to the appropriate investigating authorities. In addition, there are laws and regulations that address post-employment ethics restrictions of former Government employees. When individuals fail to comply with the laws during or after their DoD employment, they are subject to a range of penalties for failure to do so, including referral to the Department of Justice for criminal prosecution.

6. Again, the DOD followed ALL of its procedures? What was the reasoning behind the contracting officer’s decision? Is this is the same or one of the same contracting officers that worked on the initial formation of the JEDI contract? The phrasing of this sentence implies recognition that something did not meet DOD standards regarding the acquisition contract, but that this did not impact the ‘integrity of the acquisition.’ What did not meet DOD’s standards? How can we stop a reoccurrence? What do you mean that it did not impact the ‘integrity of that acquisition?’” has this determination been made by any third party contingent in DOD? Regarding the more recent allegations that a DOD employee had already accepted a position with one of the remaining competitor companies: has the DOD verified this information? Did the DOD already know this information when the contracting officer made this determination? Does this in anyway change the determination that was made by the contracting officer? How is this not a conflict of interest? Please provide citation of authorities that allow you to make these determinations.

As stated in Answer 1, the contracting officer’s authority and responsibility to investigate conflicts of interest is granted in the FAR. While DoD cannot discuss details of on-going acquisition or litigation activity, the contracting officer conducted an investigation prior to

litigation or any facts being made public. GAO upheld the contracting officer's determination in its November 14, 2018 decision. When additional information came to light during the federal court litigation process, DoD unilaterally requested a pause in the litigation work in order to conduct additional investigation. Based on this new information, the potential conflicts of interest were referred to the appropriate ethics and investigative authorities. Apart from personal conflicts of interest, the contracting officer must determine whether the overall integrity of the acquisition process has been negatively impacted by potential personal conflicts of interest. DoD followed all applicable laws and regulations, regardless of assertions to the contrary. Oracle exercised its right to protest DoD's actions in JEDI, and the federal judge will issue a decision on the conflicts of interest allegations.

- 7. Department officials have reportedly described JEDI Cloud as a "pathfinder" intended to provide a model for the Department's future transition of legacy IT systems to the cloud. Please describe any related efforts to ensure full and open competition for future Department cloud services contracts. What is a "pathfinder?" How does the JEDI contract compare to contracts for other "pathfinders?" How was the determination made that this was going to be a sole source contract? What about this program requires it to be a sole source contract? How does this determination work within DOD's cloud strategy? Please provide examples of fit for purpose vs. general purpose clouds. Is it DOD's goal to have a SINGLE cloud (we discussed this in our meeting)?**

DoD's 2018 Cloud Strategy details both the overall cloud approach and JEDI's role within that strategy. The strategy envisions a multi-cloud, multi-vendor future with JEDI as the focal point for building organizational discipline in the areas most relevant to general purpose cloud computing. The multi-cloud approach is both the intended future state and the current reality for DoD with additional contract vehicles for enterprise fit-for-purpose cloud (as defined by the strategy) efforts totaling more than \$8.5B already awarded or currently being acquired through a separate effort. Examples include the currently awarded milCloud 2.0 contract and the DEOS contract vehicle for SaaS productivity software currently being acquired through a separate effort. Ultimately, DoD intends to leverage JEDI pathfinder to develop the organizational competencies and processes necessary to operate effectively in the general purpose cloud environment (see notes on challenges with the current multi cloud environment in Answer 5). This strategy closely mirrors the approach successfully adopted by the Intelligence Community.

With respect to the questions regarding a sole source determination for JEDI, it is worth restating that JEDI is not a sole source acquisition. On the contrary, JEDI is enabling fierce competition among some of the largest and most innovative companies in the industry. The JEDI Cloud acquisition activity is a fair and open competitive source competition in full compliance with all applicable laws.

- 8. In a May 2018 report to Congress, the Department indicated that the "underlying documentation required by the Federal Acquisition Regulation to support the single award ID/IQ approach is still under development within the Department. " The**

Department also said that it would not release the final JEDI solicitation until it executed the underlying justification documents. Please provide the Department's justification supporting the use of a single award ID/IQ approach for the JEDI contract. Please PROVIDE a copy of this document and any supporting documents that were utilized in the decision making process to form this document.

A copy of the document supporting the single award ID/IQ approach is attached.

- 9. In September 2018, the OMB published their CLOUD SMART Strategy Proposal. How does the JEDI program and procurement process align with the Federal government-wide strategy outlined in the aforementioned document? Is this strategy a sound one? How many large private companies utilize similar models? How is it advantageous? How is what we have now substandard? Is this worth the cost? Sell the program. Please explain the “grocery store” model here (or wherever it is the most appropriate).**

DoD's current investments in cloud computing, which span numerous contracts with nearly every major cloud provider, are fragmented. The lack of enterprise coordination and guidance has led to Departmental inefficiencies and has hindered the Department in IT modernization efforts. It has led to disparate efforts with siloed teams, disjointed implementations with limited capability, siloed data, and inefficient acquisitions that cannot take advantage of economies of scale. Anticipated improvements in time-to-capability for software, software resilience, and cyber security have not been broadly realized across the Department. In addition, the current environment has not provided the warfighter access to readily available compute resources globally across classification levels and in the tactical environment as required by JEDI. JEDI is designed to improve the current state by shifting the focus from cloud acquisition to cloud maturity in DoD's business processes related to cyber security, application development, and workforce development. This approach mirrors many of the recommendations in the Federal Strategy as highlighted in our original response and follows the path adopted by the Intelligence Community.

- 10. How long will it take to migrate all of the proposed information onto the new JEDI server, if the server was used at its max capacity?**

There is no established consumption target in terms of systems, data, or dollars for the JEDI program. The \$10B contract ceiling establishes a maximum value for the contract itself, but decisions regarding the movement of individual applications and datasets rest with the DoD components. DoD anticipates that data and application migration will continue throughout the program lifecycle.

- 11. With all of the controversy surrounding this contract what are the reasons for not pulling the RFI and resubmitting it? Especially when you consider that historically when the DOD has done this in the past the price to the taxpayer has been significantly less.**

DoD acquisitions must be driven by the needs of the warfighter. The Department's requirements for cloud computing were extensively and thoroughly vetted over a long period of time. The requirements, which have not changed substantially, drove the acquisition approach. DoD remains confident that fierce competition within the framework of the existing acquisition will drive favorable pricing.

12. On September 13, 2017, you issued a Memorandum entitled "Accelerating Enterprise Cloud Adoption." As part of that memorandum, you established the Cloud Executive Steering Group (CESG) and appointed one CESG member, the Director of the Defense Digital Services (DDS), to lead Phase One of DoD cloud adoption, which would use a "tailored acquisition process to acquire a modern enterprise cloud services solution that can support unclassified, secret and top secret information."¹ I understand until very recently, the Director of DDS was Mr. Chris Lynch.

- a. Can you point to anywhere in the 13 September memorandum where you reference a multi-cloud, multi-vendor environment?**
- b. Can you tell me what you meant by a "tailored acquisition process," which is not a term that is familiar to me from the FAR? Is that somehow different from the full and open competition we would expect for a contract of this magnitude?**
- c. Can you tell me how the DDS is set up to manage a procurement of this magnitude as opposed to normal Department procurement channels?**
- d. Can you provide me with Mr. Lynch's background prior to heading DDS, which would qualify him to lead the largest IT procurement in history? Did he have enterprise modernization expertise? Had he led a major cloud migration? Had he ever managed a major IT procurement? Does he have any formal technical training? Please include a copy of his CV with your response.²**

The September 2017 memorandum establishing the accelerating to cloud initiative specifically identifies a multi-cloud strategy where it states: "The Department will establish a Cloud Executive Steering Group (CESG) to devise and oversee the execution of a strategy to accelerate the adoption of cloud architectures and cloud services, focusing on commercial solutions." (emphasis added) As the CESG, and then ultimately DoD CIO, guided the evolution of the acceleration to cloud initiative, the high level initiative matured into the more specific 2018 DoD Cloud Strategy, which explains how JEDI is one component of a multi-cloud ecosystem. The JEDI acquisition is consistent with that strategy.

All acquisitions within DoD are tailored consistent with the guidelines set forth in the FAR, DFARS, and DoD internal policies to best meet the needs of individual programs. The contracting officer has the authority to make these tailoring decisions in consultation with the acquisition governance processes within the Department. This term has no specific meaning related to full and open competition. JEDI was fully and openly competed with 4 of the 5 major (non-Chinese) cloud providers as identified by Gartner choosing to compete.

¹ https://www.nextgov.com/media/gbc/docs/pdfs_edit/090518cloud2ng.pdf

² <https://www.linkedin.com/in/lynchseattle/>

While the Defense Digital Service did incubate the JEDI concept and provided technical and engineering support for the development of the JEDI Cloud RFP after the Accelerating Enterprise Cloud Adoption memo (13 September 2017 memo); responsibility for JEDI Cloud was transferred to the DoD Chief Management Officer in January 2018. In June 2018 responsibility for JEDI Cloud was formerly transferred to DoD CIO with the arrival of Dana Deasy. This transfer of responsibility took place prior to the release of the JEDI RFP.

13. Can you reference any slides or documents from JEDI Industry Day that reference JEDI as a “pathfinder” or that discuss multi-cloud or multi-vendor environments? When was this term first used? When was it first provided a definition?

JEDI’s role as a pathfinder was first described publicly in summer, 2018 and was finalized in the DoD Cloud Strategy in December 2018. The strategy itself was influenced by input from many sources including comments received from industry throughout the JEDI acquisition process. The term ‘pathfinder’ is commonly used in defense programs to denote pilot, proof-of-concept, or other learning-oriented programs.

14. On November 6, 2017 DoD issued document summarizing the newly created JEDI program highlighting the use of a “single Cloud Service Provider (CSP) to deliver services for cloud computing infrastructure and platform services.”³ Can you point to any reference in that document that refers to a multi-vendor, multi-cloud solution or that refers to JEDI as a pathfinder?

On February 15, 2018, DoD publicized a JEDI FAQ on its website and explained that the November 6, 2017 document was actually a “draft document used to spark discussion and debate” within DoD, and that “the [Cloud Executive Steering Group] is still in the analysis and fact finding phase of this process to determine how many contracts will best meet DoD’s needs.” Additionally, the formation of the JEDI program predates the 2018 Cloud Strategy that formally documented JEDI’s role within the larger cloud ecosystem.

15. Can you confirm that only four vendors responded to your JEDI RFP, including Amazon, IBM, Microsoft and Oracle and that two of those vendors IBM and Oracle were eliminated for failing to meet JEDI’s “gate criteria”? Can you confirm that Google decided not to submit a bid and according to a Google spokesperson said, “had the JEDI contract been open to multiple vendors, we would have submitted a compelling solution ...?”⁴ If IBM, Oracle and Google do not qualify to participate in JEDI, can you explain how you intend to implement a multi-cloud, multi-vendor

³ https://www.nextgov.com/media/gbc/docs/pdfs_edit/121217fk1ng.pdf

⁴ <https://www.marketwatch.com/story/the-jedi-war-amazon-oracle-and-ibm-battle-in-mysterious-world-of-militarycontracts-2019-01-07>

environment with three clearly capable U.S. cloud infrastructure and platform vendors excluded?

There are only a handful of non-Chinese companies in the world that can provide general purpose cloud capabilities on the scale required for the Department of Defense. IBM, Oracle, Microsoft, and Amazon bid on JEDI. These companies represent four of the five hyper scale Infrastructure-as-a-Service (IaaS) companies as identified by Gartner. DoD cannot comment on a vendor's decision-making process related to participation in an acquisition. As discussed throughout the 2018 Cloud Strategy there are many opportunities for multi-clouds and multiple vendors for IaaS, PaaS, and software.

16. Since JEDI is now set to be awarded by July 19, 2019, do you believe that down-selecting to two vendors is enough to ensure price competition for the U.S. taxpayer? Why wouldn't keeping multiple vendors in the competition make more sense to ensure the DoD receives the best price? Is it OSDs position that only two companies are capable and willing to participate in this program?

DoD's position is that the Department carefully collected and vetted requirements, designed and formally approved a competitive acquisition strategy, and executed a competition in accordance with the applicable laws, regulations, policies, as well as the stated RFP criteria. JEDI has tremendous price competition among the cloud providers who submitted proposals. The pricing competition is going to come down to vendors who can provide the full scale of services at the best value. To ensure DoD continues to benefit from global marketplace pressures and maintain best-in-class pricing, the JEDI contract tethers its prices to the vendor's commercial prices.