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September 1, 2023

Senator Charles E. Grassley
Congresswoman Nancy Mace
United States Congress
Washington, DC 20515

Via Electronic Mail

Re: JEDI Cloud Procurement

Dear Senator Grassley and Congresswoman Mace:

I am writing in response to your July 13, 2023 letter to my client Sally Donnelly.¹ Sadly, entities with a financial interest in the Department of Defense's cloud computing contract have continued to wage a long-standing battle of disinformation, and my client is an unwarranted victim.² I appreciate this opportunity to correct some of the misleading and inaccurate premises upon which this false narrative is constructed.

As you know, shortly before he became Secretary of Defense, General James Mattis asked Ms. Donnelly if she would serve as his Senior Advisor. Called again to public service, Ms. Donnelly sold the business she had built, SBD Advisors, and joined Secretary Mattis's staff. Ms. Donnelly was honored to serve alongside the men and women of the Department of Defense for 14 months and is rightfully proud of her service. She adhered to all ethical and legal obligations and always acted in the best interest of the national security of the United States.

Your letter asserts that in her initial financial disclosure report (OGE Form 278e) Ms. Donnelly "failed to disclose" the purchaser of SBD Advisors and the remaining balance due on that sale. The Department of Defense Inspector General thoroughly investigated these same

¹ Although I have been representing Ms. Donnelly in connection with this matter for more than five years, Senator Grassley's staff only sent a copy of this letter to me after 7:00 pm on August 10, less than 24 hours before I was scheduled to begin a long-planned August vacation. As I explained at that time, I am responding upon my return to the office.

² *Someone Is Waging a Secret War to Undermine the Pentagon's Huge Cloud Contract*, Defense One, August 20, 2018, <https://www.defenseone.com/technology/2018/08/someone-waging-secret-war-undermine-pentagons-huge-cloud-contract/150685/>.

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allegations and issued an extensive report more than three years ago completely exonerating Ms. Donnelly.³ As the Inspector General found, Ms. Donnelly worked closely with experts from the Department of Defense Standards of Conduct Office (“SOCO”) to complete her Form 278e properly. As required, she disclosed to SOCO and on her Form 278e that, prior to re-entering government service, she sold the entirety of her partial ownership stake in SBD Advisors. She disclosed that, prior to re-entering government service, she had thus far received as income from that sale \$390,000 toward the full value of her partial ownership stake in SBD Advisors, which she disclosed – pursuant to the Form 278e – was worth between \$1 million and \$5 million. She also disclosed to SOCO and on her Form 278e that, while at SBD Advisors, she had received more than \$5,000 annually in compensation from consulting services provided to both Amazon Web Services and C5 Capital. When Ms. Donnelly left the Department of Defense the following year, again working closely with the experts at SOCO, she filed a “termination” Form 278e that expressly disclosed the remaining \$1,170,000 in payments she received pursuant to the sale of SBD Advisors.

The Inspector General’s investigation was professional, exhaustive, and objective. A multi-disciplinary team interviewed 80 individuals and carefully reviewed more than 32 gigabytes of emails and other documents.⁴ Their final report was more than 300 pages long. Their conclusions about Ms. Donnelly’s conduct were unambiguous: “We determined that Ms. Donnelly did not violate any ethical agreements and obligations regarding Office of Government Ethics financial disclosures.”⁵ The Inspector General made that determination because it is true.

Indeed, notwithstanding your suggestions to the contrary, the Inspector General understood that Secretary Mattis had given Ms. Donnelly very little advance notice of his request to join the Department, that Ms. Donnelly logically had turned to the other owner of an equity interest in SBD Advisors, Andre Pienaar, and sold her interest in the business to him at the same valuation that she last had purchased part of Mr. Pienaar’s interest in the business from him.⁶ All of these facts were included in the Inspector General’s report and considered as part of the Inspector General’s conclusion that Ms. Donnelly complied with her ethical obligations and made all required financial disclosures:

³ Inspector General, U.S. Department of Defense, Report on the Joint Enterprise Defense Infrastructure (JEDI) Cloud Procurement (April 13, 2020), [https://media.defense.gov/2020/Apr/21/2002285087/-1/-1/1/REPORT%20ON%20THE%20JOINT%20ENTERPRISE%20DEFENSE%20INFRASTRUCTURE%20\(JEDI\)%20CLOUD%20PROCUREMENT%20DODIG-2020-079.PDF](https://media.defense.gov/2020/Apr/21/2002285087/-1/-1/1/REPORT%20ON%20THE%20JOINT%20ENTERPRISE%20DEFENSE%20INFRASTRUCTURE%20(JEDI)%20CLOUD%20PROCUREMENT%20DODIG-2020-079.PDF) (“IG Report”).

⁴ *Id.* at 5-6.

⁵ *Id.* at 9 (emphasis added).

⁶ *Id.* at 169 n.144 (“Ms. Donnelly and Mr. Pienaar co-owned SBD Advisors. Ms. Donnelly sold her share of ownership of SBD Advisors to Mr. Pienaar in January 2017, prior to entering on duty with the DoD.”); *id.* at 190 (noting that, in January 2017, “Ms. Donnelly owned 80 percent of all SBD Advisors membership units.”); *id.* at 191-92 (quoting an August 2017 email from a SOCO attorney describing how, in 2016, Ms. Donnelly had purchased a 20% interest in SBD Advisors from Mr. Pienaar for \$390,000).

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We did not find evidence that she failed to disclose payments from SBD Advisors on her OGE 278e We found that the DoD SOCO worked closely with Ms. Donnelly on her OGE 278e form submissions and that SOCO determined that Ms. Donnelly complied with her ethics agreements and her ethical obligations regarding financial disclosures. Ms. Donnelly legally divested all of her SBD Advisors membership units before she accepted the position as Senior Advisor to Secretary Mattis, and partial payments for selling her stake in the company continued to come to her during her DoD employment. She disclosed those payments on her OGE 278 forms, as required....

With regard to financial disclosures and SBD Advisors consulting relationships with C5 Capital and AWS, we found that Ms. Donnelly sold her SBD Advisors membership units and properly annotated both her initial and termination financial disclosure forms to reflect the total proceeds she received from the sale of SBD Advisors. She sought ethics advice on how to complete this documentation, and submitted the appropriate reports as required.⁷

As the Inspector General informed Congress when asked about these issues more than a year ago, “neither the purchaser nor the purchase vehicle of Ms. Donnelly’s [company] was relevant to whether she complied with her ethical obligations.”⁸ Once Ms. Donnelly sold her interest in SBD Advisors, she had no further financial interest in the performance of that company. Whether the company performed well or poorly was irrelevant to Ms. Donnelly. Moreover, having acquired Ms. Donnelly’s interest in SBD Advisors, the purchasers were free in turn to sell all or part of the company to anyone else of their choosing at any time without Ms. Donnelly knowing about it. As the Inspector General properly understood, for ethical purposes the ownership of SBD Advisors – whether on January 22, 2017, or October 12, 2017, or March 1, 2018, or any other date – whatever it was, was simply irrelevant.⁹

The Inspector General’s investigation also thoroughly refuted the repeated false allegations that Ms. Donnelly may have attempted to influence the JEDI cloud procurement to

⁷ *Id.* at 200-01 (emphasis added).

⁸ Letter from Senator Charles E. Grassley to Secretary Lloyd J. Austin and Acting Inspector Gen. Sean O’Donnell, Dep’t of Def. (October 24, 2022), https://www.grassley.senate.gov/imo/media/doc/grassley_to_defense_deptdefenseinspectorgeneralsbdadvisorsllcconflictsofinterestreview1.pdf, at 2, *quoting* Letter from Acting Inspector Gen. Sean O’Donnell, Dep’t of Def., to Congresswoman Yvette Herrell at 10 (Mar. 8, 2022).

⁹ These dates are merely illustrative. Consistent with the basic tenets of private property, Ms. Donnelly does not know who owned all or part of SBD Advisors at any given time after she sold her interest. Following that sale, SBD Advisors also was free to work (or not work) with whatever clients it chose; Ms. Donnelly was no longer privy to or concerned with its client list.

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favor her (again, properly disclosed) former client Amazon Web Services.¹⁰ While at the Department of Defense, Ms. Donnelly had no role in acquisition or procurement. She played no role, and exercised no influence, in connection with any government contract, including – as the Department of Defense has confirmed repeatedly – the JEDI procurement. To suggest otherwise not only flies in the face of the most fundamental procedures of government contracting but also denigrates the roles of the dedicated career men and women at the Department of Defense who have spent countless hours developing and refining that and hundreds of other contracts with the sole purpose of protecting the safety and security of the United States.

The Inspector General looked thoroughly at all suggestions that Ms. Donnelly may have played a role in the JEDI procurement and, based on the evidence, not biased supposition, flatly rejected all of them. As the Inspector General summarized his lengthy and detailed findings in his April 2020 report:

We did not substantiate any of the allegations regarding Ms. Donnelly. We did not find evidence that she ... provided preferential treatment to Amazon, or improperly participated in the JEDI Cloud procurement because of her prior associations with Amazon, SBD Advisors, and C5 Capital.

We found ... no evidence that Ms. Donnelly gave Amazon officials greater or more frequent access to meetings with Secretary Mattis than Amazon's competitors who requested to meet with him. On the contrary, we found that Ms. Donnelly encouraged and helped organize Secretary Mattis' August 2017 trip to Washington and California to meet with officials from Amazon, Microsoft, Apple, and Google so he could hear perspectives from each company on corporate cultures, innovative technology risk-taking, and cloud data security.

Moreover, Ms. Donnelly was not Secretary Mattis' scheduler, and did not screen his invitations to decide which invitations should be presented to him for consideration. Mr. Sweeney, the Chief of Staff, had that duty. Once an invitation came to Secretary Mattis, Mr. Sweeney or Secretary Mattis' scheduler assisted him by requesting ethics opinions before Secretary Mattis accepted invitations. After he accepted invitations, Ms. Donnelly assisted the staff in organizing and facilitating his attendance and any associated travel, which did not favor Amazon or any other company.

¹⁰ Although your July 13, 2023 letter states that you “must determine” whether Ms. Donnelly attempted to sell AWS services to the Department of Defense while she served as Senior Advisor to Secretary Mattis (as the IG concluded, she did not) and expresses a purported need to “conduct independent oversight of [her] role in the JEDI Cloud procurement” (as the IG concluded, she played no role), your questions relate almost entirely to Ms. Donnelly's private business affairs and not to your proffered legislative purpose. To the extent any of your questions relate to Ms. Donnelly's service at the Department of Defense, responsive materials would be housed there.

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We also found no evidence that Ms. Donnelly was involved in or influenced any aspect of the JEDI Cloud procurement. She did not participate in drafting or reviewing any procurement-related documents, was not a member of the CESG or any factor evaluation panels. None of the witnesses told us she participated in any of the 27 common acquisition activities we queried them about, and none ever met or engaged with her on the procurement. The [Procuring Contracting Officer] investigation and [Government Accountability Office] review each reached the same conclusion that Ms. Donnelly played no role in the JEDI cloud procurement, and her prior consulting ties with AWS and C5 Capital while she owned SBD Advisors did not affect the integrity of the procurement....

In sum, we determined that Ms. Donnelly did not violate any ethical agreements and obligations regarding OGE financial disclosures, did not give preferential treatment to Amazon officials or restrict access to Secretary Mattis for other industry leaders, and did not violate any post-Government employment standards.¹¹

In the three years since the release of that report, the Inspector General has been unwavering in the face of repeated efforts to recycle these rejected allegations, including in multiple letters to Senator Grassley and other members of Congress. No matter how one tries to twist the facts, while working at the Department of Defense Ms. Donnelly simply did not provide preferential treatment or greater access to Amazon or anyone else and played no role in the JEDI or any other procurement.

It is also worth noting that, at its most basic level, the foundational premise of your letter is wrong. Your letter begins by referencing questions about Ms. Donnelly's alleged role "in the initial selection of Amazon for this \$10 billion 'tailored' cloud contract with DOD." Amazon Web Services, of course, was not actually selected (initially or otherwise) to receive the \$10 billion JEDI contract. Microsoft was selected but, as you know, never received the contract because the Department of Defense cancelled the JEDI cloud procurement in July 2021.¹² Not only was Amazon not selected for the JEDI contract, but in the end no one was.

These allegations about Amazon, Ms. Donnelly, and the JEDI procurement have been raised, again and again, for more than five years. They have been universally rejected, again and again. They were raised before the JEDI Cloud Procuring Contracting Officer in July 2018 and rejected. They were raised before the Government Accountability Office in November 2018 and

¹¹ IG Report at 200-01.

¹² See DOD Aims for New Enterprise-Wide Cloud by 2022, Dep't of Def. (July 7, 2021), <https://www.defense.gov/News/News-Stories/Article/Article/2684754/dod-aims-for-new-enterprise-wide-cloud-by-2022/>.

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rejected. They were raised before the U.S. Court of Federal Claims and rejected in July 2019. The U.S. Court of Appeals for the Federal Circuit affirmed that rejection in September 2020, and the U.S. Supreme Court denied Oracle's request for further review in October 2021. They were raised before the Department of Defense Inspector General, which issued a comprehensive 313-page report in April 2020 rejecting them. They were raised before the Acting Director of the Office of Management and Budget in April 2020 and rejected. They were raised before the Council of the Inspectors General on Integrity and Efficiency in April 2020 and rejected. They were raised before the U.S. Attorney's Office for the Eastern District of Virginia, where the Pentagon is located, in June 2020 and rejected. They were raised before the Public Integrity Section of the Department of Justice in September 2020 and rejected. These allegations have been rejected, over and over and over again, because there simply is not – and never has been – any there there.

In light of all of the foregoing, I feel confident saying that your questions about Ms. Donnelly's alleged influence (that never occurred) more than half a decade ago, with respect to a contract (for which Amazon was not selected) that was never even awarded, does nothing to protect our courageous warfighters or our national security. It is long past time to stop indulging these financially-motivated, counter-factual diversions about the cancelled JEDI procurement and focus instead on the Joint Warfighting Cloud Capability contract that actually *was* awarded last year¹³ to ensure it is appropriate for the task and implemented properly. Self-interested squabbles over the JEDI cloud procurement already have delayed our military's technological development in a world in which cloud services and artificial intelligence become more critical by the day. They should not be allowed any longer to distract the Congress, the Department of Defense, or our country from a task so central to our national safety and security.

Sincerely,



Michael N. Levy

¹³ The Department replaced the cancelled JEDI procurement with the multi-provider Joint Warfighting Cloud Capability program. See Department of Defense Announces Joint Warfighting Cloud Capability Procurement, Dep't of Def. (December 7, 2022), <https://www.defense.gov/News/Releases/Release/Article/3239378/departments-of-defense-announces-joint-warfighting-cloud-capability-procurement/>.