

Congress of the United States
Washington, DC 20515

October 10, 2023

VIA ELECTRONIC TRANSMISSION

Mr. Christopher J. Armstrong
Partner
Holland & Knight
800 17th St. NW
Washington, DC 20006

Dear Mr. Armstrong:

Thank you for your July 27th letter responding to our JEDI inquiry. However, your response on Mr. Pienaar's behalf is seriously deficient, and it misrepresents a number of key points. And no records backing up your assertions were provided. This is an opportunity for Mr. Pienaar to give his version of the facts and to support them with records. It's not Congress's duty to defer to a single Department of Defense Office of Inspector General (OIG) investigation, and its report, which was riddled with problems. Congress has authority to independently review the matter and the OIG's work, especially since we possess new information that the OIG failed to obtain. It's within your client's power to provide answers and records that would help us reach the truth, but your client has declined to do so. We welcome information from *any* source that furthers the public interest and gets us closer to the truth, and we're conducting an independent investigation following the facts wherever they lead.

Any claim that "[t]his matter has been fully reviewed by . . . the Government Accountability Office ('GAO'), the U.S. Court of Federal Claims, and the U.S. Court of Appeals for the Federal Circuit" isn't accurate. Neither Mr. Pienaar nor Ms. Donnelly is mentioned even once in the final decisions in any of those proceedings.¹ And of course, Mr. Pienaar's disclosure late last year that a C5 company, VMAP, was formed for the purpose of buying Ms. Donnelly's consulting firm, was new information that couldn't have been analyzed in those proceedings because of Ms. Donnelly's and C5's successful efforts to conceal that fact from the public eye. Given information that is new, and unanswered questions that are old, this matter is ripe for examination to complete the public record.

While it would be unwieldy to respond to every comment in your eleven-page letter, many of which don't directly relate to your client, it's helpful to look at some of the main points. We'll start off by noting that almost all of your letter responds to Senator Grassley's October 2022 letter to Secretary Austin and Acting Inspector General O'Donnell, and not to our recent joint letter. Your letter also attempts to speak on behalf of Ms. Donnelly, who isn't your client,

¹ U.S. Gov't Accountability Office, Decision in the Matter of Oracle America, Inc. (November 14, 2018), <https://www.gao.gov/assets/b-416657/b-416657.2.b-416657.3.b-416657.4.pdf>; *Oracle Am., Inc. v. United States*, 144 Fed. Cl. 88 (2019), *aff'd*, 975 F.3d 1279 (Fed. Cir. 2020).

even making claims about her state of mind. Although there are plenty of reasons to call many of your assertions into question, we'll only address matters with you that involve your client.

Your letter claims that you're, "currently unaware of any instance in which any relevant information that was required to be disclosed was withheld during this process [of the sale of SBD Advisors and subsequent proceedings]." If this were true, it would mean there's no legal obligation to candidly answer a direct question in an OIG investigation. As our previous letter noted, Ms. Donnelly was directly asked in the course of an official OIG interview who purchased her company, and rather than truthfully revealing the role your client's business, C5 Capital and VMAP, played in the purchase, she instead claimed that, "Andre Pienaar was *the organizer* of the sale of SBD." (Emphasis added.) While you're correct that the OIG didn't ask Ms. Donnelly to expand on her statement, that doesn't excuse her for offering a non-answer, and it also illustrates why this congressional investigation is necessary. She also had the duty to correct the misunderstanding her evasive answer created. The OIG understood Ms. Donnelly to mean that your client personally was the purchaser of her firm, as evidenced by the OIG's next question:

Q: And who did you sell SBD Advisors to?

A: Andre Pienaar was the organizer of the sale of SBD.

Q: Do you remember the date *that you sold the company to Andre Pienaar*?

A: I believe *we signed the documents* on the 19th of January, 2017, but I probably owe you a confirmation if I can find the paperwork.²

Ms. Donnelly not only didn't correct this false impression, but she answered as though that understanding was correct. We need to know whether your client had any role in Ms. Donnelly's decision to hide the identity of the purchaser and represent your client as merely "the organizer," and if so, why he wanted information concealed linking C5 and VMAP to the purchase.

Your letter also touches on the March 31, 2017, U.K. dinner, at which your client, Ms. Teresa Carlson, Ms. Donnelly, Secretary Mattis, and others were present. Because your client was present at this dinner, we'll address some of your points here as well. You selectively quote, as did the OIG, the DOD Standards of Conduct Office (SOCO) attorney who wrote that there was, "no ethics objection" regarding the dinner. This perfectly illustrates yet again why your reliance on the OIG report, and your expectation that we should do so, is misguided. The email you refer to was sent March 24, 2017, from DOD Office of General Counsel (OGC), and it didn't indicate that a full ethics screening had been performed. Instead, the email focused upon whether the Secretary "may accept the 'gift' of the meal," and which ethics exemptions would allow that gift.³

² U.S. Dep't of Defense, Office of Inspector Gen., Interview of Sally B. Donnelly (August 15, 2019) at 6 (emphasis added), https://www.dodig.mil/Portals/48/DODOIG-2020-001050%201st%20Interim%20response%20records_1.pdf.

³ Email from redacted sender, Senior Attorney and Deputy Designated Agency Ethics Official, Standards of Conduct Office, Office of General Counsel, U.S. Dep't of Defense, to redacted recipient in Office of the Secretary of Defense (March 27, 2017 at 5:19 p.m.), on file with staff.

For the UK dinner, the exemption from the gift restrictions outlined above would apply in the same manner. Additionally, there is a special exception for "meals in foreign areas" that would provide an alternate basis to authorize attendance if the "formal" presentation of information is less likely.

Indeed, the email to OGC ethics official regarding the dinner, which prompted the SOCO email, didn't even identify either your client's or Ms. Carlson's business affiliations, which would have been necessary to conduct a full and complete ethics review.

From: (b) (6) CIV SD
Sent: Friday, March 24, 2017 9:15 AM
To: (b) (6) CIV OSD OGC (US) (b) (6) (b) (6)
Cc: (b) (6) CIV SD (b) (6) (b) (6) (b) (6) CIV SD (b) (6) (b) (6)
Subject: dinners we spoke of...

Hi (b) (6).

For the boss' upcoming trip to NYC and UK, the FO asked that I get your scrub on the attendees for the two dinners we spoke of. Context: He is -- in a sense -- the guest of honor at both events which were arranged and assembled by the hosts. He has personal relationships with most - if not all - of the attendees of the Friday dinner in the UK.

Here are the attendees as I have them:

Friday (UK)
18:30 - 20:00

Dinner

Principal, Faller, Donnelly
General Graeme Lamb - Host: assembled guest list
General David Richards
Major General James Chiswell
Minister Tobias Ellwood
Cheryl Plumridge
Teresa Carlson
Andrew Pienaar

Off the Record - Listening Mode

This is unlike the list of attendees supplied for the New York dinner (which the Secretary attended on his way to the U.K.), which did include attendees' corporate affiliations.

Bloomberg Dinner

Principal. Faller. Donnelly
Michael Bloomberg - Host, assembling guest list
James Gorman, CEO, MorganStanley
Gerald Hassell, CEO, Bank of New York
Stephen Schwarzman, CEO, Blackstone
Urusla Burns, Chairman of the Board, Xerox
Mike Corbat, CEO, Citigroup
Anne Finucane, Vice Chairman, Bank of America
Tim Geithner, Former Secretary of the Treasury
Stephen Ross, Chairman, Related Companies

Ms. Donnelly, at the time, also had not disclosed her ongoing payments from your client's company because she hadn't filed an ethics disclosure yet and wouldn't file it until nearly two months after the U.K. dinner. Accordingly, ethics officials couldn't have considered that information.⁴ Ms. Donnelly's former company, SBD Advisors, reportedly maintained Amazon as a client throughout Ms. Donnelly's time at the DOD, which if true means that Ms. Donnelly was being paid for the purchase even as funds reportedly came in to SBD Advisors from Amazon.⁵

It is also important to note that the U.K. dinner laid the groundwork for the JEDI contract, as it led to the August 10, 2017, meeting between Mr. Bezos and Secretary Mattis that was behind the Secretary's decision to move the DOD to the cloud, apparently with the intent to award the massive contract without competition solely to Amazon.⁶ While you repeatedly allude to the fact that Microsoft ultimately was awarded the JEDI contract, that fact isn't dispositive as to the questions we are investigating, which is whether serious conflicts were allowed to exist at DOD and whether your client or Ms. Donnelly improperly attempted to use her role at DOD for private gain.

⁴ Letter from Senator Charles Grassley, Ranking Member, U.S. Senate Comm. On the Judiciary, to Lloyd Austin, Secretary, U.S. Dep't of Defense, and Sean O'Donnell, Acting Inspector General, Dep't of Defense, Office of the Inspector General, Exhibit A, Sally Donnelly New Entrant Report, OGE Form 278e, (October 24, 2022), https://www.grassley.senate.gov/imo/media/doc/grassley_to_defense_deptdefenseinspectorgeneralsbdadvisorsllconflctsofinterestreview1.pdf.

⁵ The Daily Caller, Andrew Kerr, Government Ethics Watchdogs Fear Amazon's Web of Influence May Have Tainted Pentagon's \$10 Billion JEDI Cloud Deal (August 8, 2018), <https://dailycaller.com/2018/08/08/sally-donnelly-defense-department-jedi-cloud-amazon/>.

⁶ See, e.g., email, William Roper, United States Air Force, to Pat Shanahan, Deputy Secretary of Defense, and Ellen Lord, Undersecretary for Acquisitions (August 12, 2017) (reporting on Secretary Mattis's August 10, 2017 Amazon visit and noting that Secretary Mattis made an "important decision" on that trip, and that the Secretary, "now believe[d] in Cloud tech and wants to move the Departments to it"), forwarded to Ms. Donnelly by Anthony DeMartino (August 14, 2017 at 7:20 a.m.); email, Jennifer Chronis, Amazon Web Services, to Joshua J. Marcuse, Office of the Secretary of Defense (September 6, 2017 at 7:07 a.m.) (referencing "cost estimates [from Amazon] for a notional DoD move to the cloud"); memo, Patrick Shanahan, Deputy Secretary of Defense (co-authored by Anthony DeMartino), for secretaries of the military departments, Chairman of the Joint Chiefs of Staff, Under Secretaries of Defense, et alia, Subject: Accelerating Enterprise Cloud Adoption (September 13, 2013) (directing the "use of a tailored acquisition process to acquire a modern enterprise cloud services solution that can support unclassified, secret, and top-secret information," a directive that later is referenced in Air Force acquisition documents as meaning that, "The AWS Cloud Solution is a DoD priority as per the Secretary of Defense Memorandum dated 13 Sep. 2017 . . ."), all documents on file with staff.

Indeed, three weeks following the U.K. dinner, at which your client's then-partner, Teresa Carlson, an AWS vice president responsible for AWS sales to DOD, invited Secretary Mattis to meet with Amazon CEO Jeff Bezos, Donnelly continued singing the praises of Amazon, which the "Why Bezos" email below clearly illustrates, and pushed hard for the meeting between Mr. Bezos and Secretary Mattis that was first offered in your client's presence.⁷

From: "Donnelly, Sally SES SD" <SD/EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/RECIPIENTS/DONNELLY, SALLY258>
Sent: 4/23/2017 2:17:20 AM -0400
To: "Faller, Craig RADM SD" (b) (6) >
Subject: Why Bezos

Why meet Bezos.

- 1) He asked (via Theresa Carlson at the dinner in London).
- 2) Amazon is one of the most successful starts up in the history of the US economy: in 20 years Amazon has surpassed Wal-Mart in market capitalization.
- 3) Amazon has revolutionized delivery and consumer service—based on deep knowledge of predictive analytics and technology. Innovation is the organizing principle of the company and Bezos is famous for mandating his staff produce plain English problem statements prior to every senior meeting at the company.
- 4) Amazon's success based on technical excellence and security. The Amazon cloud is the foundation of all Amazon's businesses and allows unprecedented speed. Amazon's cloud is one of four hyperscale cloud providers (the others are Google, Facebook, Microsoft). Amazon's focus on security (they have hired many former USG/NSA/CIA experts) was so convincing to CIA that the Agency two years ago took the surprising step of migrating the bulk of its secure work to Amazon. By all accounts, the CIA remains pleased with its work.
- 5) Bezos has also built from scratch a space company(Blue Origin) which, along with SpaceX, is transforming space flight through reusable rockets (of note, Blue Origin has a productive/symbiotic relationship w/the United Launch Alliance (Boeing, etc.), as opposed to SpaceX, which is challenging ULA head on.
- 6) Bezos owns the Washington Post, so has influence beyond the business world.
- 7) Bezos serves on the Defense Innovation Board.

She also offered advice to an Amazon official in preparation for the Secretary's meeting with Mr. Bezos days before it occurred, in response to the salesperson's request for "general guidance," and any, "landmines [Amazon] should avoid," during Amazon's presentation to the Secretary.⁸ The meeting between Secretary Mattis and Mr. Bezos resulted in the JEDI procurement, as it was the catalyst for Secretary Mattis's decision to move DOD data to the cloud.⁹

When a DOD official notified Ms. Donnelly that the August meeting between Mattis and Bezos had "morph[ed] into an AWS sales pitch," that made the official uneasy ("I didn't get a good vibe out of it"), but that Secretary Mattis left the meeting "'99.9% there' in terms of going

⁷ Email, Sally B. Donnelly to Craig Faller, Subject: Why Bezos (April 23, 2017 at 2:17 a.m.), on file with staff.

⁸ Email, Jennifer Chronis, General Manager, Amazon Web Services, to Sally Donnelly, Subject: SecDef Visit Next Week (August 4, 2017 at 10:19 p.m.) (the email from Ms. Chronis also asks Ms. Donnelly to "put a bug in some ears" about resistance Amazon is receiving from DOD CIO with reference to, "cloud and major policy blockers"); reply email, Sally Donnelly to Jennifer Chronis (August 4, 2017 at 4:40 p.m.) (Donnelly gives advice for Amazon's presentation to Secretary Mattis, advising Amazon that, "[u]sing one example of DOD obstacles to cloud (if that is what below) would be helpful. Also security security security of cloud. Oh yeah, and if we see power point, that will not be helpful. :)"), on file with staff.

⁹ *Supra* n. 6.

to the cloud,” Donnelly responded: “Excellent.”¹⁰ So much for Ms. Donnelly being walled off from matters related to Amazon, as you and the OIG claim.

Congress needs to know whether your client had any conversations with Ms. Donnelly related to her efforts to promote Amazon and her attempts to push for a meeting between Mr. Bezos and the Secretary, and whether he was aware of any such conversations between Ms. Donnelly and Ms. Carlson. We also request your client describe any knowledge he may have of Ms. Donnelly’s role in Ms. Carlson’s attendance at the London dinner and any discussions Ms. Carlson may have had with Ms. Donnelly related to her plan to ask Secretary Mattis to meet with Mr. Bezos.

As a final note on the U.K. dinner, your letter’s accounting of the event, again relying on the OIG report, shows just how muddy the record is. Your letter notes that Secretary Mattis told OIG investigators he didn’t recall, “a single mention of the cloud or of Amazon” at the dinner, but only two bullet points later, your letter notes that, “[w]hen Ms. Carlson was introduced to Sec. Mattis, she was introduced as part of AWS [Amazon Web Services] Cloud computing,” after which your letter points out that Secretary Mattis directly offered his thoughts on whether the DOD should move to the cloud. As you and your client can plainly see, it’s important that Congress hear your client’s version of what was discussed at that meeting and not just repetition of a discredited OIG report.

Your letter leaves a number of other issues just as muddy. It claims, for example, that your client, Mr. Pienaar, had no interest in purchasing SBD Advisors and was simply helping a longtime business partner comply with her ethics obligations. The letter notes that, “Pienaar agreed to organize the sale in less than three days with the intention of selling all shares to other investors, which Pienaar subsequently did.” To this day and despite Senator Grassley’s repeated inquiries, your client has not disclosed which investors purchased SBD Advisors from C5 and Mr. Pienaar in 2017. You also haven’t identified which “additional investors” Mr. Pienaar relied upon “to raise the capital needed to complete the financing of the sale” in such a short amount of time.

Your client has also failed to explain why C5 publicly claimed it had nothing to do with the initial purchase of the company and quickly sold it off, only to buy it back the next year with a public announcement making it seem this was C5’s first exposure to the company.¹¹ He’s also failed to explain why the public website of ITC Global Advisors (the new name given to Ms. Donnelly’s former firm) was taken down not long after C5 re-acquired shares of it in 2018 and why there seems to be no public advertising seeking clients for ITC Global Advisors. It also appears that there was no non-compete agreement in place, which allowed Ms. Donnelly to found a carbon-copy firm, Pallas Advisors, after her short tenure at DOD. These facts taken together make one wonder what exactly your client was paying Ms. Donnelly for. We need the details of every step of the process of divesting and re-acquiring Ms. Donnelly’s former

¹⁰ Email, Redacted sender (CIV SD) to Sally Donnelly (August 10, 2017 at 2:35 PM); email, redacted sender (CIV SD) to Sally Donnelly (August 10, 2017 at 2:59 pm), on file with staff.

¹¹ Press release, *ITC Secure Acquires U.S. U.S.-based SBD Advisors*, Business Wire (April 3, 2018), <https://www.businesswire.com/news/home/20180403005624/en/ITC-Secure-Acquires-U.S.-based-SBD-Advisors>.

company, including financial records documenting all capital contributions in SBD Advisors by Mr. Pienaar and all purchases of shares in the company by any party, before we can be confident we've reached the facts of this matter.

Your letter's claims as to the existence of records we requested raises red flags. Your letter claims that Senator Grassley's office already has a copy of the Purchase and Sale Agreement. This is false. There is quite a difference between an unredacted *copy* and a redacted copy on which staff penciled in information viewed in camera. Our request is for an unredacted copy of the original contract, and your client has not complied with that request.

The next claim in the letter, that your client found no relevant records related to our request for, "[a]ll records between and among [Mr. Pienaar] or any party associated with C5 or VMAP Investor LLC, and Sally Donnelly, Anthony DeMartino, or any DOD official, related to Amazon or the JEDI cloud procurement," is very surprising. This would mean that Mr. Pienaar and C5 have no records, for example, of communications with Ms. Donnelly related to Amazon consulting, or Ms. Donnelly's consulting for C5 related to Amazon.¹² Your client also failed to respond to our request for, "[f]inancial records reflecting any payments pursuant to the January 2017 Purchase and Sale Agreement, including but not limited to each of the purported \$390,000 payments previously referenced in the DoD OIG Report." This request is not ambiguous. It requests financial records related to the payments, not just certain details that are "in the public domain."

Your letter also claims that, "C5 Capital has never received any funds of any kind from Amazon," other than matching funds from Amazon related to "C5's accelerator programs." Our request specifically asked for financial records of all payments from Amazon to, "C5 Capital, *or any of its subsidiaries, officers, or employees* at any time from 2015 to the present." C5 has had at least some business dealings with Amazon by Amazon's own admission. For example, an AWS blog entry notes that, "[i]n April of 2017, C5 became part of the AWS Partner Network (APN) Channel Reseller Program for one deal supporting the Bahrain Information and eGovernment Authority (iGA)."¹³ Please describe the extent of C5's reseller relationship with Amazon, and clarify whether it is distinct from the accelerator program you referenced in your letter. We request, again, that your client provide records related to any payments received. And of course, we've already referenced news reports that SBD Advisors continued to receive payments from Amazon after C5 purchased it.¹⁴ Your client should clarify whether these reports are accurate. If so, any payments received from Amazon while SBD Advisors was owned by C5 would fall under our request as well.

Your client entirely ignored our request for, "financial records relating to any consideration [Mr. Pienaar or C5] paid in connection with the sale of SBD Advisors." While your letter notes that you've already briefed Senator Grassley's office on this sale, that wasn't the request. We specifically requested financial records.

¹² Interview with Sally Donnelly, *supra* n. 2 at 9 (when Ms. Donnelly was asked what years she was a consultant for C5 Capital, she responded, "I believe I started . . . the beginning of 2013 . . . [t]hrough when I went into the government and sold the company.")

¹³ AWS Public Sector Blog, Setting the Record Straight on Inaccurate Reporting about AWS and JEDI (December 13, 2018), <https://aws.amazon.com/blogs/publicsector/setting-the-record-straight-on-inaccurate-reporting-about-aws-and-jedi/>.

¹⁴ The Daily Caller, *supra* n. 5.

Your client apparently had trouble understanding the final request for, “all records reflecting communications between and among [Mr. Pienaar] or [his] representatives and any CS [sic] entity or person in connection with SBD Advisors.” This request also is not ambiguous. It’s looking for any communications, or related documents, where your client is discussing anything to do with SBD Advisors (now known as ITC Global Advisors) with any C5 entity or person. This would most likely involve Mr. Pienaar’s internal communications within C5, or with its board members, employees, affiliates, subsidiaries, investors, etc. If your client is unable to understand any of our other requests, please let us know, and we’ll be happy to explain them.

We request that your client supply the requested records by October 24, 2023, and we reiterate our request for a transcribed interview with your client on this matter.

Sincerely,



Charles E. Grassley
Ranking Member
Senate Committee on the Budget



Nancy Mace
Member of Congress
Committee on Oversight & Accountability