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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

August 31, 2021

**VIA ELECTRONIC TRANSMISSION**

Ms. Allison Lerner  
Chair  
Council of the Inspectors General  
on Integrity and Efficiency  
1717 H Street, NW, Suite 825  
Washington, DC 20006

Dear Ms. Lerner:

Attached you will find a memo concerning information my staff has uncovered regarding alleged inaccuracies within the Department of Defense's Office of Inspector General (DoD OIG's) JEDI report. In light of the seriousness of the allegations, I request that the Council of Inspector General on Integrity and Efficiency assign a qualified third-party inspector general to review allegations that the JEDI report intentionally failed to provide a complete and accurate accounting of the fact pattern and evidence under review, is replete with known inaccuracies, and was "rounded" in such a way that it significantly altered the understanding of what actually occurred during the formation of the JEDI program and the corresponding contracting process. I am also sending another letter to DoD OIG requesting answers to questions as well as documents that it thus far has failed to produce to Congress.

Should you have any questions please reach out to Danny Boatright of my Judiciary staff at (202) 224-5225. Thank you for your time and consideration regarding this important matter.

Sincerely,



Charles Grassley  
Ranking Member  
Senate Committee on the Judiciary



## Memorandum

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**TO:** Senator Grassley  
**FROM:** Oversight and Investigations  
**SUBJECT:** New allegations regarding DoD OIG JEDI review  
**DATE:** August 27, 2021

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Over the last two years you have conducted an investigation into the Department of Defense's (DoD) Joint Enterprise Defense Infrastructure (JEDI) program which would provide cloud computing services for the entirety of DoD. Many whistleblowers have come to you and your office to express their concerns with DoD's handling of both the JEDI's design and contracting process. In April 2020, the DoD Office of Inspector General (OIG) issued a report on JEDI and found that some individual DoD employees engaged in ethical misconduct related to the JEDI Cloud procurement; oddly, however, the report also found that the same contracting process was conducted generally within bounds and did not detrimentally affect the contracting process.

After that report was issued, your office received additional whistleblower information, reports, and other documents relating to JEDI. Reports recovered from FOIA productions show that DoD OIG's report excluded key emails between DoD employees that provide important context about how those employees were involved in the JEDI contracting process and that contradict the report's ultimate findings. Specifically, the report selectively edited DoD employee emails in such a way that it downplayed the impact of the employees' advocacy for Amazon as well as their authorities and roles in DoD. The report also includes a selectively edited DoD legal opinion without notation that it's been edited. These emails, as well as other productions, also show that DoD employees potentially lied to DoD OIG and likely materially altered both the program's design and the subsequent contracting process. In light of the report's apparent fundamental flaws, and considering the DoD's forthcoming second attempt to build a cloud computing infrastructure across the Department through its Joint Warfighting Cloud Capability program (JWCC), your staff concluded that the Council of the Inspectors General on Integrity and Efficiency (CIGIE) must conduct a thorough review of the OIG's JEDI report.

The JEDI program has been marred in controversy from the beginning.<sup>1</sup> As originally conceived, the program would have provided classified and unclassified cloud services to DoD, established and promoted a platform for machine learning, and created a testing ground for

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<sup>1</sup> Ashley Stewart, *The \$10 Billion JEDI Process Was a 'Nonstop Litany of Inappropriate Ethical Behavior,' But Now Amazon's Best Bet to Take the Deal From Microsoft Hinges on a 'Wildcard' Error, Experts Say*, BUSINESS INSIDER (Apr. 27, 2020), <https://www.businessinsider.com/amazon-pentagon-microsoft-jedi-cloud-computing-2020-4> (quoting George Washington University Law School's government contracting professor, Steven Schooner, "I can't think of another procurement ever where the nonstop litany of inappropriate ethical behavior and conflicts of interest produced such a steady drumbeat"); see also Press Release, George Washington University School of Law, Schooner Featured in AP, Bloomberg, and WaPo for Procurement Expertise (Jan. 29, 2020), <https://www.law.gwu.edu/schooner-featured-ap-bloomberg-and-wapo-procurement-expertise>; Steven L. Schooner, *Indefinite-Delivery/Indefinite-Quantity Contracts: Time to Correlate Practice and Policy?*, 32 NASH & CIBINIC REP. ¶ 44 (2018), [https://scholarship.law.gwu.edu/faculty\\_publications/1363/](https://scholarship.law.gwu.edu/faculty_publications/1363/).

artificial intelligence (AI) capabilities.<sup>2</sup> According to reports, DoD officials initially intended to award the program's contract to Amazon via a government contracting method known as Other Transaction Authority (OTA), which would have allowed DoD to avoid using the normal competitive bidding process.<sup>3</sup> Internal DoD contracting experts rejected this approach for various reasons, including the size and scope of the JEDI program, which made it fundamentally incompatible with OTA requirements. DoD leadership subsequently published a memo describing its intent to award the JEDI contract via a "tailored acquisition."<sup>4</sup> Since "tailored acquisition" is not a term defined in the Federal Acquisition Regulations (FAR), many interpreted this as an alternative means of "tailoring" the process to award the \$10 billion JEDI program to Amazon.<sup>5</sup>

DoD personnel with ties to Amazon were allegedly responsible for crafting key confidential aspects of the JEDI program and its contract.<sup>6</sup> These conflicts of interest prompted multiple joint and independent legal challenges.<sup>7</sup> They also led to multiple congressional inquiries and an OIG review.<sup>8</sup>

<sup>2</sup> Ben Tarnoff, *Weaponized AI is Coming. Are Algorithmic Forever Wars Our Future?*, THE GUARDIAN (Oct. 11, 2018), <https://www.theguardian.com/commentisfree/2018/oct/11/war-jedi-algorithmic-warfare-us-military>; see also Memorandum from Patrick Shanahan, U.S. Deputy Sec'y of Def., on DoD Cloud Strategy to Dep't of Def. (Dec. 2018), <https://media.defense.gov/2019/Feb/04/2002085866/-1/-1/1/DOD-CLOUD-STRATEGY.PDF> (providing an infographic outlining DoD plans for cloud consolidation under the JEDI program).

<sup>3</sup> 10 U.S.C. § 2371b (codifying the OTA program); see also Tom Schatz, *A Closer Look at DOD's Cloudy JEDI Contract*, FCW (Aug. 10, 2018), <https://fcw.com/articles/2018/08/10/comment-schatz-jedi.aspx> (calling the JEDI program's "protracted process leading up to the RFP . . . a lesson in how [not to do] procurement in the federal government," while also explaining the DoD's history with the OTA authority and its implication in the JEDI contract design process).

<sup>4</sup> Memorandum from Patrick Shanahan, Deputy Sec'y of Def. on Accelerating Cloud Adoption to Dep't of Def. (Sept. 13, 2017), [https://federalnewsnetwork.com/wp-content/uploads/2017/11/091317\\_Shanahan\\_Cloud\\_Memo.pdf](https://federalnewsnetwork.com/wp-content/uploads/2017/11/091317_Shanahan_Cloud_Memo.pdf).

<sup>5</sup> May Jeong, "Everybody Immediately Knew That It Was For Amazon": Has Bezos Become More Powerful In D.C. Than Trump?, VANITY FAIR (Aug. 13, 2018), <https://www.vanityfair.com/news/2018/08/has-bezos-become-more-powerful-in-dc-than-trump>.

<sup>6</sup> See Julie Bort, *There's a New Snag for Amazon in the Winner-Take-All \$10 Billion Pentagon Cloud Contract, and it Could Be Good News for Microsoft*, BUSINESS INSIDER (Feb. 19, 2019), <https://www.businessinsider.com/amazon-jedi-cloud-contract-snap-2019-2>; see also Katishi Maake, *Reported Revelation Pauses Legal Fight Over JEDI Procurement*, WASHINGTON BUSINESS JOURNAL (Feb. 21, 2019), <https://www.bizjournals.com/washington/news/2019/02/21/reported-revelation-pauses-legal-fight-over-jedi.html>; Aaron Gregg, "Once an Amazonian, Always an Amazonian": Former Pentagon Official's Business Ties Draw Scrutiny, WASHINGTON POST (Dec. 18, 2018), <https://www.washingtonpost.com/business/2018/12/18/once-an-amazonian-always-an-amazonian-former-pentagon-officials-business-ties-draw-scrutiny/>.

<sup>7</sup> Aaron Gregg, *GAO Axes IBM's Bid Protest, Teeing Up a Court Battle Over Pentagon's \$10 Billion Cloud Effort*, WASHINGTON POST (Dec. 11, 2018), [https://www.washingtonpost.com/business/2018/12/12/gao-axes-ibms-bid-protest-teeing-up-court-battle-over-pentagons-billion-cloud-effort/?utm\\_term=.781b4670547a](https://www.washingtonpost.com/business/2018/12/12/gao-axes-ibms-bid-protest-teeing-up-court-battle-over-pentagons-billion-cloud-effort/?utm_term=.781b4670547a); see also IBM Corporation, B-416657.5 et al. (Comp. Gen. Dec. 11, 2018) [hereinafter IBM GAO Protest]; Oracle America, Inc., B-416657 et al. (Comp. Gen. Nov. 18, 2018).

<sup>8</sup> INSPECTOR GEN., U.S. DEP'T OF DEF., REPORT ON THE JOINT ENTERPRISE DEFENSE INFRASTRUCTURE (JEDI) CLOUD PROCUREMENT, REPORT NO. DODIG-2020-079, at 1-3 (Apr. 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); see also Letter from Rep. Chris Stewart & Rep. Steve Womack to Lloyd Austin III, Sec'y of Def., Dep't of Def., & Sean O'Donnell, Acting Inspector Gen., Dep't of Def. (May 19, 2021), <https://stewart.house.gov/news/documentsingle.aspx?DocumentID=806>; Letter from Mike Lee, Ranking Member, Subcomm. on Competition Policy, Antitrust, and Consumer Rights of the S. Comm. on Judiciary & Ken Buck, Ranking Member, Subcomm. on Antitrust, Commercial, and Administrative Law of the H. Judiciary Comm. to Sean O'Donnell, Acting Inspector Gen., Dep't of Def. Off. of Inspector Gen. (May. 4, 2021), [https://www.lee.senate.gov/public/\\_cache/files/0792e85a-87d2-4e24-9076-bf1c132d39af/letter-to-dod-oig-05.04.21-1-.pdf](https://www.lee.senate.gov/public/_cache/files/0792e85a-87d2-4e24-9076-bf1c132d39af/letter-to-dod-oig-05.04.21-1-.pdf); Letter from Mike Lee, Ranking Member, Subcomm. on Competition Policy, Antitrust, and Consumer Rights of the S. Comm. on Judiciary & Ken Buck, Ranking Member, Subcomm. on Antitrust, Commercial, and Administrative Law of the H. Judiciary Comm., to Merrick Garland, Att'y Gen., Dep't of Justice (May 4, 2021), [https://www.lee.senate.gov/public/\\_cache/files/4418963a-8c3d-4abb-bb2d-0318e7e22dcb/letter-to-ag-garland-05.04.21.pdf](https://www.lee.senate.gov/public/_cache/files/4418963a-8c3d-4abb-bb2d-0318e7e22dcb/letter-to-ag-garland-05.04.21.pdf).

The OIG's April 2020 review of the JEDI program focused on issues and conflicts that arose after the program's Request for Proposal (RFP) was issued but ultimately did not find the JEDI program's contracting process had been corrupted.<sup>9</sup> Many seized on the OIG's administrative review of the JEDI procurement process and findings as proof that the DoD, with the exception of certain individuals, did not commit any substantive wrongdoing. However, the OIG did not examine allegations surrounding events preceding the RFP process, including allegations senior leadership were involved from the very beginning and pressured DoD employees to assign the contract to Amazon without using a competitive bidding process.<sup>10</sup> The OIG's review also reportedly failed to fully consider information submitted through the office's whistleblower hotline before publication of the JEDI report.<sup>11</sup> These reports allege the reviewed issues stemmed from instances that occurred well before the RFP, implying there was likely reason to expand the DoD OIG's scope of review, which the OIG did not do. Specifically, these reports claim OIG did not consider seven evidentiary submissions made to the whistleblower hotline, and failed to interview key witnesses including companies that had participated in the JEDI competition and requested to be interviewed.

In addition, new reports stemming from Freedom of Information Act (FOIA) requests raise additional concerns. Documents provided to your office support whistleblower allegations that OIG leaders were more closely involved in drafting and editing the review than usual and that political concerns heavily influenced their actions. Such behavior conflicts with well-established OIG standards as well as the independence expected of OIGs.<sup>12</sup> Accordingly, it appears that the OIG JEDI report is fundamentally flawed.

**DoD OIG selectively edited quotes from Sally Donnelly's emails, diminishing the perceived role she played as both gatekeeper to Secretary Mattis and advocate for the JEDI program going to Amazon.**

Sally Donnelly served as Senior Advisor to the Secretary of Defense starting in January 2017 and began advocating for DoD to procure a cloud computing system.<sup>13</sup> She originally began working for DoD in 2007 as a Special Assistant to Admiral Mike Mullen, Chairman for the Joint Chiefs of Staff, before joining James Mattis three years later at the United States Central

<sup>9</sup> REPORT ON THE JOINT ENTERPRISE DEFENSE INFRASTRUCTURE (JEDI) CLOUD PROCUREMENT, *supra* note 8, at 3–5.

<sup>10</sup> *Id.* at 3–4.

<sup>11</sup> Letter from Kenneth Glueck, Exec. Vice President, Oracle Corp., to Glenn A. Fine, Acting Inspector Gen., Dep't of Def. (Mar. 5, 2020) (on file with author); Letter from Kenneth Glueck, Exec. Vice President, Oracle Corp., to Sean O'Donnell, Acting Inspector Gen., Dep't of Def. (May 1, 2020) (on file with author); Letter from Kenneth Glueck, Exec. Vice President, Oracle Corp., to Sean O'Donnell, Acting Inspector Gen., Dep't of Def. (Oct. 13, 2020) (on file with author); Letter from Kenneth Glueck, Exec. Vice President, Oracle Corp., to Charles E. Grassley, Chairman, S. Comm. on Fin. (Dec. 7, 2020) (on file with author).

<sup>12</sup> U.S. GOV'T ACCOUNTABILITY OFF., GOVERNMENT AUDITING STANDARDS, GAO-21-368G (2021), <https://www.gao.gov/assets/gao-21-368g.pdf>; see also COUNCIL OF THE INSPECTORS GEN. ON INTEGRITY AND EFFICIENCY, QUALITY STANDARDS FOR FEDERAL OFFICES OF INSPECTOR GENERAL (2012), <https://www.ignet.gov/sites/default/files/files/Silver%20Book%20Revision%20-%208-20-12r.pdf>.

<sup>13</sup> Sally Donnelly, U.S. DEP'T OF DEFENSE, <https://www.defense.gov/Our-Story/Biographies/Biography/Article/1420561/sally-donnelly/> (last visited Aug. 30, 2021).

Command.<sup>14</sup> In 2012, Donnelly shifted to the private sector to found SBD Advisors, a firm which bore her initials and specialized in “engagements between the technology and defense sectors.”<sup>15</sup> Donnelly’s experience with DoD was her selling point. Top clients, including Amazon, turned to her firm for advice about securing new DoD cloud contracts.<sup>16</sup> In January 2017, Donnelly sold her majority share in the firm to Andre Pienaar, the CEO of C5 Capital, who also has close ties to Amazon, for \$1.56 million, \$1.17 million of which she received while working at DoD.<sup>17</sup> On January 21, 2017, Donnelly was sworn in as Senior Advisor to the Secretary of Defense.<sup>18</sup> She stepped into the role with many years of DoD experience, significant connections to Amazon, and extensive knowledge regarding the internal workings of DoD, ethical expectations, and politics.<sup>19</sup> Armed with this knowledge, it would appear she, and others, used that knowledge to shape the development of the JEDI contract from its early stages so Amazon could more easily procure it.

The documents released in response to FOIA requests show Donnelly advocated for Amazon from the beginning of her return to DoD. The OIG’s JEDI report refers to an April 21, 2017 email sent by a redacted DoD employee to Donnelly and a high-ranking service member to ask if they wanted the Secretary to accept a request for a call with Jeff Bezos.<sup>20</sup> However, the OIG report cut the e-mail’s final line in which Donnelly is informed that Secretary Mattis’ Chief of Staff *deferred to her* for consideration.<sup>21</sup> This directly contradicts another section in the OIG report where the OIG also cites an interview that was conducted with Donnelly in which she denies that she was the “decider of who gets in meetings, and who goes to meetings [with the Secretary of Defense].”<sup>22</sup> The email illustrates Donnelly *was* a gatekeeper, at least for this meeting with Bezos.

By not including this email language in the JEDI report, the DoD OIG failed to provide full context and seemingly endorsed her claim that she was not responsible for who Secretary Mattis met with. Additionally, the OIG report omits Donnelly’s response to the Chief of Staff’s prompt. Her reply enthusiastically stated with regard to Bezos, “I think he is the genius of our age,

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<sup>14</sup> James Bandler, Anjali Tsui & Doris Burke, *How Amazon and Silicon Valley Seduced the Pentagon*, PROPUBLICA (Aug. 22, 2019), <https://www.propublica.org/article/how-amazon-and-silicon-valley-seduced-the-pentagon>; see also Sally B. Donnelly, HOLLINS UNIVERSITY, <https://www.hollins.edu/175th-anniversary/distinguished-graduates/sally-b-donnelly/> (last visited Aug. 25, 2021); Sara Sirota, *Pentagon Audit Found Connection Between Mattis-Era Defense Department and Amazon-Linked British Consultant*, THE INTERCEPT (June 14, 2021), <https://theintercept.com/2021/06/14/pentagon-defense-department-amazon-mattis/>; Sally Donnelly, POGO, <https://www.pogo.org/database/pentagon-revolving-door/people/sally-donnelly/> (last visited Aug. 30, 2021).

<sup>15</sup> Andrew Kerr, *Government Ethics Watchdogs Fear Amazon’s Web Of Influence May Have Tainted Pentagon’s \$10 Billion JEDI Cloud Deal*, DAILY CALLER (Aug. 8, 2018), <https://dailycaller.com/2018/08/08/sally-donnelly-defense-department-jedi-cloud-amazon/>.

<sup>16</sup> Kerr, *supra* note 15; see also Bandler, Tsui, & Burke, *supra* note 14.

<sup>17</sup> Kerr, *supra* note 15; see also Sirota, *supra* note 14.

<sup>18</sup> Sirota, *supra* note 14; see also Sally Donnelly, U.S. DEP’T OF DEFENSE, <https://www.defense.gov/Our-Story/Biographies/Biography/Article/1420561/sally-donnelly/> (last visited Aug. 25, 2021).

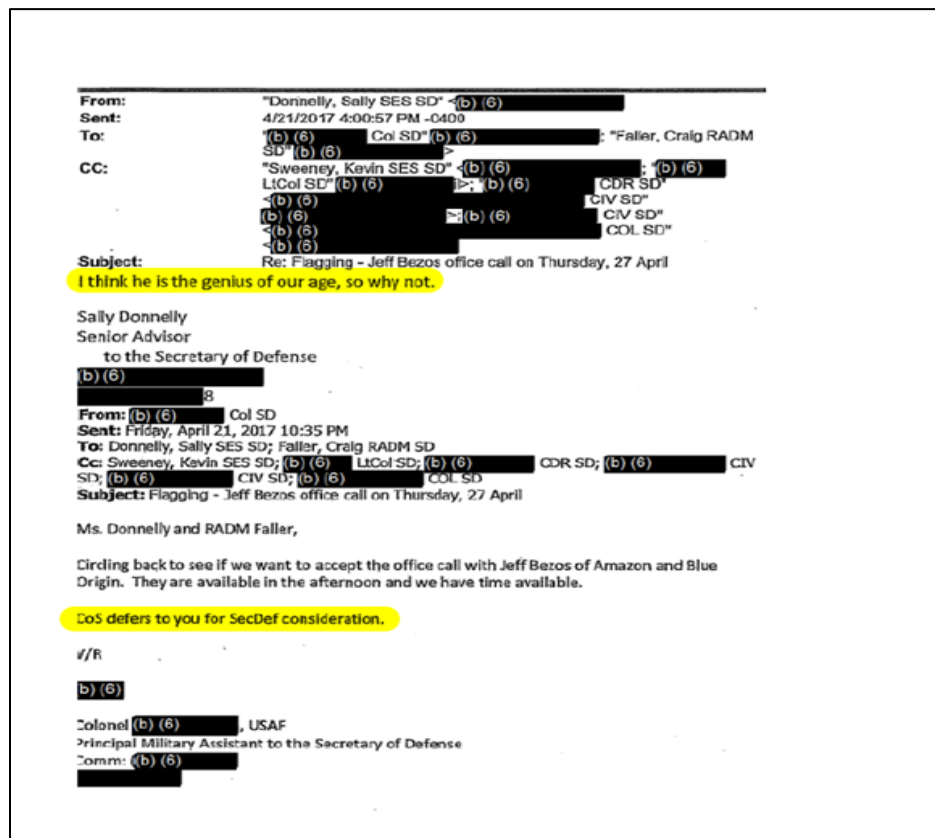
<sup>19</sup> Donnelly completed her initial ethics training on Jan. 25, 2017 as well as an annual training on Jan. 19, 2018.

<sup>20</sup> REPORT ON THE JOINT ENTERPRISE DEFENSE INFRASTRUCTURE (JEDI) CLOUD PROCUREMENT, *supra* note 8, at 195; see also Email from DoD Employee to Sally Donnelly, Senior Advisor & Adm., and Craig Faller, Senior Military Advisor (Apr. 21, 2017) (on file with author).

<sup>21</sup> Email from DoD Employee to Sally Donnelly, Senior Advisor & Adm., and Craig Faller, Senior Military Advisor (Apr. 21, 2017) (on file with author).

<sup>22</sup> REPORT ON THE JOINT ENTERPRISE DEFENSE INFRASTRUCTURE (JEDI) CLOUD PROCUREMENT, *supra* note 8, at 177.

so why not.”<sup>23</sup> When viewing the email in its entirety, it is clear Donnelly not only approved of the call but strongly indicated her support for the meeting and for Bezos as an individual.



\*Note: Highlighted sections indicate portions of text that were not included in DoD OIG's JEDI review quotations.

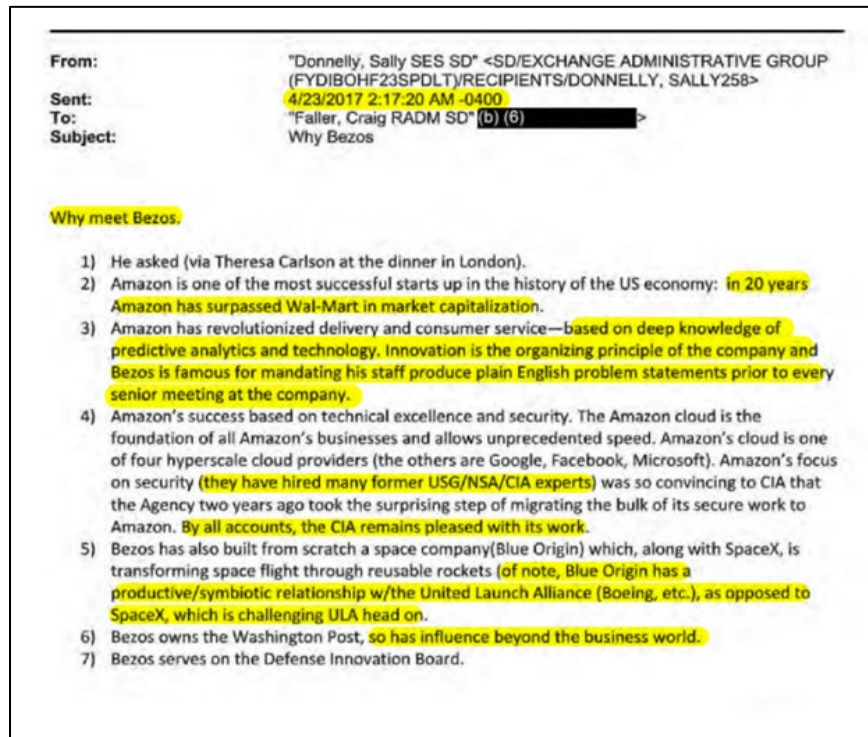
Instead of fully quoting this correspondence, the OIG report places emphasis on an unsolicited email Donnelly sent two days later to Admiral Craig Faller providing reasons why Secretary Mattis should meet with Bezos.<sup>24</sup> Unfortunately, the OIG also heavily edited this email in a way that changes its plain meaning, effectively softening Donnelly's overt advocacy for Amazon. At numerous points in the FOIA document, Donnelly praises both Bezos and Amazon for having "deep knowledge of predictive analytics and technology," "innovation," and "influence beyond the business world."<sup>25</sup> She also cites to the CIA's decision to use Amazon and its apparent satisfaction with Amazon's services (the CIA, as well as most of the information security industry, has since changed its cloud computing program from the single provider model - solely Amazon -

<sup>23</sup> Email from Sally Donnelly, Senior Advisor to DoD Employee & Adm., to Craig Faller, Senior Military Advisor (Apr. 21, 2017) (on file with author).

<sup>24</sup> Email from Sally Donnelly, Senior Advisor, to Adm. Craig Faller, Senior Military Advisor (Apr. 23, 2017) (on file with author).

<sup>25</sup> Email from Sally Donnelly, Senior Advisor, to DoD Employee & Adm. Craig Faller, Senior Military Advisor (Apr. 23, 2017) (on file with author).

to one with multiple providers to enhance usability, security, and reliability).<sup>26</sup> Evidence of Donnelly's advocacy and blatant preferential treatment, as displayed in these emails, are nowhere to be found in the OIG's report.



\*Note: Highlighted sections indicate portions of text that were not included in DoD OIG's JEDI review quotations.

## The DoD OIG downplayed Donnelly's involvement in the Secretary of Defense's "sales pitch" meeting with Bezos and the broader implications on the formation of the JEDI program and contract.

According to emails released in response to a FOIA request, Donnelly edited and approved documents in preparation for the Secretary's August 2017 meeting with Bezos. On July 12, 2017, a redacted DoD employee emailed Donnelly stating an attached draft of the Amazon agenda, "reflect[ed] the edits that [Donnelly] made earlier [that day]."<sup>27</sup> The redacted DoD employee

<sup>26</sup> Email from Sally Donnelly, Senior Advisor, to DoD Employee & Adm. Craig Faller, Senior Military Advisor (Apr. 23, 2017) (on file with author); see also Ron Miller, *The CIA Wants to Upgrade its Cloud Tech Without DoD's JEDI Drama*, TECH CRUNCH (Feb. 7, 2020), <https://techcrunch.com/2020/02/07/the-cia-wants-to-upgrade-its-cloud-tech-without-dods-jedi-drama/?guccounter=1>. The article states:

The procurement process would be in two phases. In the first phase, they would pursue multiple vendors to provide 'foundational cloud services.' In Phase 2, the department would layer on platform and software services on top of that Phase 1 foundation . . . Cloud technology has certainly evolved in the seven years since the CIA last did this exercise, and it makes sense that it would want to update a system this old, which is really ancient history in technology terms. The CIA likely sees the same cloud value proposition as the private sector around flexibility, agility and resource elasticity, and wants the intelligence community to reap the same benefits of that approach. Certainly, it will help store, process and understand an ever-increasing amount of data, and put machine learning to bear on it as well.

<sup>27</sup> Email from Redacted DoD Employee to Sally Donnelly, Senior Advisor (July 12, 2017) (on file with author); see also Miller, *supra* note 26.

further asked Donnelly to approve the draft before transmission. The attached draft outlined what equates to Amazon cloud sales points for the future JEDI project.<sup>28</sup> It included lines explaining how Amazon could move DoD to a “more modern IT environment,” how the CIA and NSA were already using Amazon cloud services, and how DoD AI programs would eventually become part of the JEDI program. Donnelly approved the draft that evening.

**Jeff Bezos/Amazon Meeting Contours:**

- **Date:** Thursday, 10 August
- **Time:** 9:00-11:45 am
- **Location:** Kent, WA (Blue Origin HQ, approx. 18 miles/30 minute drive from downtown Seattle)
- **Agenda/Meeting Topics:**
  - Innovation & Leadership:
    - How DoD can better leverage innovation in the commercial world
    - What DoD can learn from Amazon as DoD moves toward a more modern IT environment
  - Cloud Technology:
    - Blue Origin’s use of Amazon Web Services (AWS) cloud technology and infrastructure
    - DoD use of AWS cloud to process, store, and transmit data
    - CIA & NSA AWS applications
  - Artificial Intelligence & Machine Learning—DoD applications
  - Cybersecurity:
    - Data encryption vs Firewall (particular interest in security of “data at rest”)
    - IC work
  - Tour (time permitting)
  - **Notes:**
    - Meeting will be at Blue Origin, but Blue Origin is *not* the focus of the meeting.

On August 7, 2017, three days before the meeting with Bezos, Donnelly approved the tentative Amazon meeting minutes. They included an introduction by the Chief of Amazon Web Services (AWS) Sales and former Donnelly client, Teresa Carlson, as well as a block of time set aside for an AWS cloud overview by an AWS salesperson.<sup>29</sup>

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<sup>28</sup> *Id.*

<sup>29</sup> Email from Redacted DoD Employee to Sally Donnelly, Senior Advisor (Aug. 7, 2017) (on file with author).

<b>0900-0930</b>	Secretary Mattis Arrival and Meeting with Jeff B (Gary Cohn also present)
	(Jeff B, Teresa Carlson +public policy person)
<b>0930-0935</b>	Welcome and Overview
	(Teresa Carlson)
<b>0935-0945</b>	Cloud Overview
	(Jennifer Chronis, Jim Caggy)
<b>0945-1005</b>	Security and Encryption
	(CJ Moses)
<b>1005-1025</b>	AI, Machine Learning, IoT
	(Matt Wood, Ranju Das)
<b>1025-1055</b>	Storage- Snowball Demo
	(Bill Vass)
<b>TIME PERMITTING</b>	STEM RECRUITMENT, LOGISTICS

Minutes after the August 10 meeting between the Secretary of Defense and Bezos, Donnelly received an email from a redacted DoD employee who was with the Secretary at the meeting. The email read:

Just leaving Amazon. The one on one seemed to go very well. The large group seemed to morph into an *AWS sales pitch*. Boss was nice and gracious but *I didn't get a good vibe out of it*. Will share more later.<sup>30</sup>

Approximately 30 minutes later Donnelly received another email stating, “Boss did say that he was ‘99.9% there’ in terms of going to cloud ... Bezos ended up staying for the duration of the entire visit which was not part of the original plan.”<sup>31</sup> Donnelly then replied, “Excellent.”<sup>32</sup>

Two days after the meeting, a redacted DoD employee emailed Deputy Secretary of Defense Patrick Shanahan and Under Secretary of Defense for Acquisition and Sustainment Ellen Lord to inform them the Secretary of Defense “now believe[d] in Cloud tech and want[ed] to move the DoD to it.”<sup>33</sup> The employee then added, “we have the baton on pulling a plan together for him.”<sup>34</sup> The employee also explained, “The CIA has already blazed a trail moving to C2S (i.e., TS/SCI Amazon Web Services Cloud).”<sup>35</sup> Donnelly was forwarded this email and informed, “SA.

<sup>30</sup> Email from Redacted DoD Employee to Sally Donnelly, Senior Advisor (Aug. 10, 2017) (on file with author) (emphasis added).

<sup>31</sup> Email from Redacted DoD Employee to Sally Donnelly, Senior Advisor (Aug. 10, 2017) (on file with author).

<sup>32</sup> Email from Sally Donnelly, Senior Advisor to Redacted DoD Employee (Aug. 10, 2017) (on file with author).

<sup>33</sup> Email from Redacted DoD Employee to Patrick Shanahan, Deputy Sec’y of Def., & Ellen Lord, Under Sec’y of Def. for Acquisition and Sustainment (Aug. 12, 2017) (on file with author); see also Billy Mitchell, *Pentagon Sets ‘Aggressive’ Path to Cloud with New Steering Group*, FEDSCOOP (Sept. 22, 2017), <https://www.fedscoop.com/pentagon-sets-aggressive-path-cloud-new-steering-group/>. See generally Ellen M. Lord, U.S. DEP’T OF DEF., <https://www.defense.gov/Our-Story/Biographies/Biography/Article/1281505/ellen-m-lord/> (last visited Aug. 30, 2021).

<sup>34</sup> Email from Redacted DoD Employee to Patrick Shanahan, Deputy Sec’y of Def., & Ellen Lord, Under Sec’y of Def. for Acquisition and Sustainment (Aug. 12, 2017) (on file with author).

<sup>35</sup> *Id.*

NODIS please.”<sup>36</sup> Translation: “Situational awareness. No distribution please.” On September 13, 2017, after just a month of reviewing the strengths and weaknesses of the CIA’s cloud program, Shanahan published the “tailored acquisition” memo outlining DoD’s plans for cloud adoption. It is important to note that shortly after these meetings, the CIA left its C2S platform in favor of a multivendor program known as C2E.<sup>37</sup>

Unfortunately, the OIG’s JEDI report fails to include any of these examples as evidence which, if cited, would have contradicted Donnelly’s claims that she had limited involvement with the JEDI program. Further, it misleadingly describes the Secretary of Defense’s California trip in August as “meetings with leaders from Amazon, the Defense Innovation Unit (Experimental), Google, and Apple Inc., to discuss how the Pentagon can *improve in recruiting and retaining young talent*.”<sup>38</sup> The emails in question clearly show these topics were not the focus of the meeting with Bezos and were instead listed under the category “time permitting.”<sup>39</sup> Further, the Secretary of Defense told the OIG that Donnelly “*knew of his interest and concerns* about cloud technology and *suggested* that he travel to the west coast to meet with the CEOs of the companies he had been reading about, and learn more about their available technologies.”<sup>40</sup> He also told the OIG that, “at his request, [Donnelly] and other staff members *organized* an August 2017 trip to Seattle, Washington and Silicon Valley in California, to meet with executives from *Amazon*, Microsoft, Google, and Apple.”<sup>41</sup>

It is unclear whether Microsoft, Google, and Apple were provided a similar opportunity to give sales pitches to the Secretary of Defense. It is also unclear if any high-ranking DoD officials helped craft talking points/minutes for the other companies. However, we know from the FOIA documents that Donnelly did strongly advocate for Amazon to the point that some DoD employees expressed concerns regarding the Amazon “sales pitch.”<sup>42</sup> With the limited information that we have, we are led to believe the Secretary of Defense’s meeting with Bezos was unique compared to the others that occurred during the August 2017 trip.

Ultimately, the OIG’s JEDI report asserts that Donnelly “did not give preferential treatment to Amazon officials.”<sup>43</sup> This finding draws doubt because the FOIA documents strongly indicate otherwise. The documents show that Donnelly acted as a gatekeeper for the Secretary of Defense on this issue; passionately advocated for the Secretary’s meeting with Bezos; was the final check on meeting documents pertaining to what would be discussed, by who, when; and expressed

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<sup>36</sup> Email from Tony DeMartino, Deputy Chief of Staff to Sec’y of Def., to Sally Donnelly, Senior Advisor (Aug. 12, 2017) (on file with author).

<sup>37</sup> Memorandum from Patrick Shanahan, Deputy Sec’y of Def. on Accelerating Cloud Adoption to Dep’t of Def. (Sept. 13, 2017) (on file with author); *see also* Miller, *supra* note 26.

<sup>38</sup> REPORT ON THE JOINT ENTERPRISE DEFENSE INFRASTRUCTURE (JEDI) CLOUD PROCUREMENT, *supra* note 8, at 171 (emphasis added).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 178 (emphasis added).

<sup>41</sup> *Id.* at 178 (emphasis added).

<sup>42</sup> Email from Redacted DoD Employee to Sally Donnelly, Senior Advisor (Aug. 10, 2017) (on file with author).

<sup>43</sup> REPORT ON THE JOINT ENTERPRISE DEFENSE INFRASTRUCTURE (JEDI) CLOUD PROCUREMENT, *supra* note 8, at 201.

satisfaction after being told that, despite the meeting devolving into an Amazon cloud sales pitch, the Secretary was on the verge of initiating a DoD wide cloud computing program.

**The DoD OIG materially misrepresented an official DoD Standards of Conduct Office Ethical opinion that raised concerns about favoritism toward Amazon in the design of the JEDI program.**

After the Secretary's first meeting with Bezos and in preparation for a second, DoD sought an ethical opinion from its Standards of Conduct Office (SOCO).<sup>44</sup> The quoted portion of SOCO's response included in the OIG report leads the reader to believe it is acceptable, if not customary, for the Secretary of Defense to meet with CEOs from large tech companies like Amazon as long as the process is fair and transparent and all competitors are afforded the same opportunity.

However, documents released as a result of a FOIA request show that a large section was omitted from the middle of the SOCO opinion without any editorial indication. That section says DoD officials may meet with industry officials "as long as they do not give preferential treatment."<sup>45</sup> The omitted section also states that when determining whether there has been preferential treatment, there are "[s]everal factors [that] should be taken into account, including the *topic(s) to be discussed* . . . and any other factors that might give rise to the *appearance* of impropriety."<sup>46</sup> As previously noted, Donnelly approved the minutes for the meeting with Bezos which was later called an AWS cloud sales pitch. If Donnelly arranged that meeting so that Amazon could provide the Secretary of Defense a sales pitch on their cloud computing services, such a meeting would likely run afoul of the test that DoD's SOCO describes, especially when taking into account the resulting RFP that followed which was described by industry insiders as being designed for Amazon.<sup>47</sup> Without access to the additional documents that DoD and DoD OIG have thus far failed to provide you, we cannot confirm whether or not other companies that bid on the JEDI program received similar time and access with the Secretary of Defense. Nor can we determine without this information whether or not DoD employees likewise advocated on behalf of those companies. None of the issues or concerns in this paragraph were discussed at any length by the OIG's report let alone how they would almost certainly lead people to believe the JEDI program was designed and built for Amazon.<sup>48</sup>

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<sup>44</sup> *Id.* at 183–84.

<sup>45</sup> Email from Ruth Vetter, Dir. of Standards of Conduct Off., to Kevin Sweeney, Chief of Staff to the Sec'y (Oct. 18, 2017) (on file with author).

<sup>46</sup> *Id.* (emphasis added).

<sup>47</sup> May Jeong, "Everybody Immediately Knew That It Was For Amazon": Has Bezos Become More Powerful In D.C. Than Trump?, VANITY FAIR (Aug. 13, 2018), <https://www.vanityfair.com/news/2018/08/has-bezos-become-more-powerful-in-dc-than-trump>; see also Patrick Tucker, Google is Pursuing the Pentagon's Giant Cloud Contract Quietly, Fearing An Employee Revolt, DEFENSE ONE (Apr. 12, 2018), <https://www.defenseone.com/technology/2018/04/google-pursuing-pentagons-giant-cloud-contract-quietly-fearing-employee-revolt/147407/>; Rosalie Chan, Google Drops Out of Contention for a \$10 Billion Defense Contract Because It Could Conflict With Its Corporate Values, BUSINESS INSIDER (Oct. 8, 2018), <https://www.businessinsider.com/google-drops-out-of-10-billion-jedi-contract-bid-2018-10>.

<sup>48</sup> See generally Frank Konkel, *Much of the NSA's Most Prized Intelligence Data May be Moving to the Cloud.*, NEXTGOV (Aug. 10, 2021), <https://www.nextgov.com/it-modernization/2021/08/nsa-awards-secret-10-billion-contract-amazon/184390/>; Microsoft Says NSA Needs to Undo Its \$10B Cloud Computing Contract with Amazon, HOMELAND SECURITY TODAY (Aug. 17, 2021), <https://www.hstoday.us/subject-matter-areas/information-technology/microsoft-says-nsa-needs-to-undo-its-10b-cloud-computing-contract-with-amazon/>.

-----Original Message-----

From: Vetter, Ruth M SES OSD OGC (US) [mailto:(b) (6)]  
Sent: Wednesday, October 18, 2017 10:36 AM  
To: Sweeney, Kevin SES SD (b) (6); (b) (6) CTV SD  
(b) (6)  
Cc: (b) (6) CTV OSD OGC (US) (b) (6)  
Subject: Proposed Meeting with Jeff Bezos (UNCLASSIFIED)

CLASSIFICATION: UNCLASSIFIED

Kevin and (b) (6) ,

I wanted to follow-up with you on SD's question about meeting with Mr. Jeff Bezos of Amazon. I do not have an ethics objection to SD meeting with Mr. Bezos. I also do not think it poses an optics concern as long as SD is willing to meet with representatives of similarly situated entities.

The key is for engagement with industry to be fair, even, and transparent. DoD officials can generally meet one-on-one with members of industry as long as they do not give preferential treatment to some members of industry. Several factors should be taken into account, including the topic(s) to be discussed, whether the official is willing to hold such meetings with all similarly situated entities, any pending matters involving the contractor (procurements, claims, audits, etc.), and any other factors that might give rise to an appearance of impropriety. In the past when contractors have asked to come in to basically "pitch" their products and services to SD or DSD, we have normally advised that these meetings be directed down as they are not in the position to make specific contract decisions; however, based on our discussion, it sounds like the proposed engagement with Mr. Bezos would be at a much higher level (not a sales pitch). Additionally, I confirmed that Mr. Bezos is not a member (or even a quasi-member) of the Defense Innovation Board, so I am not concerned about triggering Federal Advisory Committee Act restrictions.

Please let me know if you have any questions or if you would like to discuss further.

Best,  
Ruth

Ruth M.S. Vetter  
Director, Standards of Conduct Office  
Office of the General Counsel  
Department of Defense

\*Note: Highlighted sections indicate portions of text that were not included in DoD OIG JEDI review and was not noted as being removed.

## Compliance with Congressional Requests for Information

Critically, despite multiple requests for information you made to DoD and the DoD OIG over the years about the JEDI program, neither agency ever produced the information discussed in this memo to you. Instead, your staff compiled this information from documents that were provided to us from individuals and organization that made outside FOIA requests. This continues the trend of federal agencies ignoring congressional inquiries. As you know, some agencies have refused to respond to members unless they are committee chairmen. Agencies instead push

members to make their congressional inquiries via FOIA.<sup>49</sup> This came up most recently during the Trump administration when DOJ OLC published an opinion that claimed only congressional committees and committee chairman are “constitutionally authorized” requestors.<sup>50</sup> You pushed back at that time and were able to get commitments that the administration would continue to respond to Congressional inquiries irrespective of Chair status.

## Conclusion

The JEDI program may have come to an end, but much is still required to fully understand and remedy the unethical conduct stemming from the actions of some DoD employees and a faulty OIG investigation. Evidence compiled from the FOIA request suggests the OIG’s JEDI report was at best highly mismanaged and at worst purposefully manipulated, or “rounded.”<sup>51</sup> The report neglected to include Donnelly’s gatekeeping role, misrepresented her efforts to advocate for Amazon, downplayed her role in the “sales pitch” meeting with Bezos, and omitted key portions

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<sup>49</sup> U.S. CONST. art. I (authorizing that all legislative powers shall reside with a bicameral Congress); *see also* *McGrain v. Daugherty*, 273 U.S. 135, 177, 181–82 (1927) (stating “We are of [the] opinion that the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function.”); *Eastland v. United States Servicemen’s Fund*, 421 U.S. 491, 509 (1975) (expanding on its holding in *McGrain*, the Court declared, “To be a valid legislative inquiry there need be no predictable end result.”); *Watkins v. United States*, 354 U.S. 178 (1957) (The “power of Congress to conduct investigations is inherent in the legislative process. *That power is broad.* It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed laws.”) (emphasis added); 5 U.S.C. § 522 (d) (1966) (showing explicitly that Congress did not alter its historic authority to conduct oversight: “[The Freedom of Information Act (FOIA)] is not authority to withhold information from Congress.”); *Murphy v. Dep’t of Army*, 613 F.2d 1151 (D.C. Cir. 1979). In *Murphy*, the D.E. Circuit stated:

Similarly, we find no basis in the statute or in public policy for distinguishing for FOIA purposes between a congressional committee and a single Member acting in an official capacity. The Senate and the House are so organized that certain legislative and quasi-legislative activities may be accomplished only through committee action. In other respects, however, the legislature acts through its individual Members. All Members have a constitutionally recognized status entitling them to share in general congressional powers and responsibilities, many of them requiring access to executive information. It would be an inappropriate intrusion into the legislative sphere for the courts to decide without congressional direction that, for example, only the chairman of a committee shall be regarded as the official voice of the Congress for purposes of receiving such information, as distinguished from its ranking minority member, other committee members, or other members of the Congress. Each of them participates in the law-making process; each has a voice and a vote in that process; and each is entitled to request such information from the executive agencies as will enable him to carry out the responsibilities of a legislator.

*Id.* But *see* FOIA Update: OPI Guidance: Congressional Access Under FOIA, Vol. V, No. 1 (Jan. 1, 1984) (stating that, despite *Murphy* the DOJ, and by extension, the rest of the Federal government, only needs to provide information when it is requested by committee Chairmen). This opinion appears to stand alone in such a line of reasoning, and in fact seems to contradict federal statutes, regulations, appellate court opinions, Supreme Court opinions, and the U.S. Constitution. Agencies, however, continue to rely on this flawed reasoning to neglect and delay Congressional inquiries which are necessary to effectively conduct oversight of the federal government, find solutions, and ultimately legislate. Further, countless nominees have sat before the various Senate committees and sworn under oath to quickly provide requested information to all members as well as substantive and thorough responses. Despite the oaths they take and the overwhelming legal requirements outlined above, appointees and the agencies they represent consistently utilize tactics of evasion, obfuscation, and ambiguity in an effort to obstruct lawful congressional oversight.

<sup>50</sup> Senator Charles E. Grassley, News Release, Grassley Calls On President To Rescind OLC Opinion Shielding Bureaucrats From Scrutiny (June 9, 2017) <https://www.grassley.senate.gov/news/news-releases/grassley-calls-president-rescind-olc-opinion-shielding-bureaucrats-scrutiny> (calling on President Trump to answer all Congressional inquiries regardless of seniority or party stating, “I know from experience that a partisan response to oversight only discourages bipartisanship, decreases transparency, and diminishes the crucial role of the American people’s elected representatives”).

<sup>51</sup> Judiciary Oversight and Investigations staff was advised by former DoD OIG employees that from time-to-time sensitive reports undergo a process known as “rounding.” This process is used by high level staff members in the OIG to smooth out sensitive reports and avoid controversy. It is unclear if this is a formal or informal process, regardless it is reportedly a well-known within DoD OIG and possibly other OIGs as well.

of a SOCO opinion. In direct contradiction to the report, the documents that your staff has uncovered show that Donnelly utilized her years of DoD experience and a professional history of lobbying for defense contractors to not only encourage the successful creation of a DoD cloud computing program, but helped engineer the creation of the JEDI program in such a way that Amazon was all but sure to be the winner.

These omissions in the OIG report fundamentally reshape the understanding of the potential ethical violations that may have been committed by Donnelly and the other DoD employees named in the report. It is also unclear at this time if other omissions were made in the report or what effect they have on a full understanding of the facts. Whether these omissions by the OIG were deliberate or the result of simple oversight is unclear but Congress deserves answers on that point. Regardless of the intentions, they demonstrate the need for additional oversight. CIGIE must conduct a thorough review to evaluate the flaws in the investigative process and the inaccuracies in the JEDI report. Further, the OIG should be compelled to explain how these inaccuracies were included in their report.

In the same memo DoD announced the end of the JEDI program, it announced the beginning of a new DoD-wide cloud computing initiative known as JWCC which will likely require similar oversight. All of the information surrounding the improprieties of the JEDI program must be made public to ensure the mistakes made in JEDI do not follow the new JWCC program.

Finally, in response to the aforementioned concerns with respect to the JEDI report, your staff believes that further review is necessary and recommends that you send a letter to DOD OIG requesting that they answer questions relating to the failings of the JEDI report and provide outstanding records. We also recommend that you send a letter to CIGIE asking them to appoint an impartial third-party OIG to review the failings that transpired during the DoD OIG JEDI review. As you've said many times in the past, sunlight is the best disinfectant.