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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

January 7, 2022

VIA ELECTRONIC TRANSMISSION

The Honorable Sean O'Donnell
Acting Inspector General
Department of Defense
4800 Mark Center Dr.
Alexandria, VA 22305

Dear Inspector General O'Donnell:

I read your September 15, 2021 response to my August 31, 2021 letter regarding my continued oversight of the Department of Defense (DoD) Office of Inspector General's (DoD OIG) Joint Enterprise Defense Infrastructure (JEDI) report.¹ Unfortunately, I continue to receive information from whistleblowers that suggests DoD OIG's investigative process and the resulting JEDI report is materially deficient. Further, despite repeated calls between DoD OIG and multiple congressional offices, DoD OIG's continued failure to adequately respond to inquiries demands additional scrutiny.

In your September 15 letter, you stated that "the information" I used to draft my August 31 letter "lack[ed] important context"—an interesting assertion, given the trove of requested information and "context" your office and the DoD refuse to provide. Your position is untenable in light of the overwhelming evidence that clearly shows your office cut corners and misrepresented the full context of government records in your possession—records that your office failed to produce to Congress but were ultimately acquired by Freedom of Information Act (FOIA)

¹ Letter from Charles E. Grassley, Ranking Member, S. Comm. on Judiciary, to Sean O'Donnell, Acting Inspector Gen., Dep't of Def. (Aug. 31, 2021), https://www.grassley.senate.gov/imo/media/doc/grassley_to_defense_dept.officeofinspectorgeneraljedireportfaults.pdf; Letter from Sean O'Donnell, Acting Inspector Gen., Dep't of Def. to Charles E. Grassley, Ranking Member, S. Comm. on Judiciary (Sept. 15, 2021), https://www.grassley.senate.gov/imo/media/doc/defense_dept.inspectorgeneraltograssleyjedi.pdf; see also INSPECTOR GEN., U.S. DEP'T OF DEF., DODIG-2020-079, REPORT ON THE JOINT ENTERPRISE DEFENSE INFRASTRUCTURE (JEDI) CLOUD PROCUREMENT (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) [hereinafter JEDI Report].

requesters. For more than two years, I have made repeated requests for information from DoD and the DoD OIG and both offices failed to provide full and complete responses. The only new and relevant documents that I received since the publication of the JEDI report were acquired by third party requesters of FOIA documents.² I have attached copies of the recent FOIA documents that I have received during this investigation to this letter to show DoD and DoD OIG what governmental transparency looks like.³

Simply put, it is unacceptable and nonsensical that in response to my August 31 letter, DoD OIG replied to my requests by highlighting portions of documents to support the JEDI report while also refusing to provide those very same documents in full.⁴ This pattern of repeated obfuscation by DoD OIG shows disdain and disregard for congressional oversight. Moreover, DoD OIG's dismissive attitude toward well-documented concerns that individuals involved in the drafting and finalization of the JEDI report were responsible for omissions and material misrepresentations of key evidence does nothing to resolve the unanswered questions I've posed to you. In fact, it creates more questions.

For example, in anticipation of a September 20, 2021, phone call between your staff and several congressional offices to discuss your September 15, 2021, letter, two documents were requested from your Office:

1. An ethics email mentioned on page 173 of the Report where the phrase "no ethics objection" is quoted; and
2. A sales contract for SBD Advisors, a firm retained by Amazon Web Services (AWS), and owned by Sally Donnelly, the former Special Assistant to then-Secretary of Defense, James Mattis to unknown individual(s).⁵

These documents, though received by my office, were fully redacted and lacked any notation justifying the redactions. Fortunately, a whistleblower delivered an un-redacted version of the ethics email to my office, a copy of which is also attached to this letter.⁶ Additionally,

² Longstanding precedent and Congress's constitutional powers support Ranking Members' authority to request and receive information from Inspectors General. *See* Letter from Roger Wicker, Ranking Member, S. Comm. on Com., Sci., & Transp., Charles E. Grassley, Ranking Member, S. Comm. on Judiciary, Tim Scott, Ranking Member, S. Comm. Aging et al., to Merrick Garland, Att'y Gen., Dep't of Just. (Sept. 24, 2021), <https://www.commerce.senate.gov/services/files/CB506190-F57A-4026-A799-616F00475DE0>.

³ Attachment A (All received FOIA Documents not otherwise cited).

⁴ Letter from Sean O'Donnell, Acting Inspector Gen., Dep't of Def. to Charles E. Grassley, Ranking Member, S. Comm. on Judiciary (Sept. 15, 2021), https://www.grassley.senate.gov/imo/media/doc/defense_dept_inspectorgeneraltograssleyjedi.pdf.

⁵ Attachments B & C (Redacted documents from DoD OIG).

⁶ The e-mail to SOCO requesting a "scrub" of attendees included titles and organizations for the New York City meeting but not for the U.K. meeting. Further, the body of the e-mail stated that "he has personal relationship with most – if not all – of the attendees of the ... dinner in the UK." For this reason, SOCO was clearly unable to search for conflicts of interest for that list of people because they did not know who those individuals worked for. *See* Attachment D (Unredacted SOCO Opinion).

during this call, and contrary to standard practice when briefing congressional staff, your staff refused to identify some key members of the JEDI report team who conducted the briefing. I request a written explanation for withholding the names of these federal employees who were integral enough to brief Congress on the quality and veracity of the JEDI report, but somehow barred from being identified.

Further, the JEDI report characterized the DoD's Standards of Conduct Office (SOCO) ethics email as finding neither a conflict of interest nor an objection to the meeting between former Secretary Mattis and high-level Amazon officials, among others.⁷ However, the email shows that SOCO never performed a conflict of interest analysis regarding who would be at that meeting, but instead simply evaluated the meeting on the narrow grounds of whether DoD's restrictions on meal gifts were triggered. Accordingly, the JEDI report attributed a much broader conflict of interest assessment to SOCO than was actually performed.⁸

Separately, after receiving your September 15, 2021 letter I returned to the second SOCO ethics opinion, which I discussed in my August letter to you.⁹ In the JEDI report, an entire paragraph from that opinion, which details the "factors [that] should be taken into account" when evaluating potential conflicts for a meeting between Secretary Mattis and Jeff Bezos, is omitted from the JEDI report.¹⁰

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

⁷ Letter from Sean O'Donnell, Acting Inspector Gen., Dep't of Def. to Charles E. Grassley, Ranking Member, S. Comm. on Judiciary (Sept. 15, 2021), https://www.grassley.senate.gov/imo/media/doc/defense_dept.inspectorgeneraltograssleyjedi.pdf.

⁸ JEDI Report, *supra* note 1, at 184, [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 Charles E. Grassley, Ranking Member, S. Comm. on Judiciary, to Sean O'Donnell, Acting Inspector Gen., Dep't of Def. (Aug. 31, 2021), https://www.grassley.senate.gov/imo/media/doc/grassley_to_defense_dept.officeofinspectorgeneraljedireportfaults.pdf.

⁹ Letter from Charles E. Grassley, Ranking Member, S. Comm. on Judiciary, to Sean O'Donnell, Acting Inspector Gen., Dep't of Def. (Aug. 31, 2021), https://www.grassley.senate.gov/imo/media/doc/grassley_to_defense_dept.officeofinspectorgeneraljedireportfaults.pdf; Letter from Sean O'Donnell, Acting Inspector Gen., Dep't of Def. to Charles E. Grassley, Ranking Member, S. Comm. on Judiciary (Sept. 15, 2021), https://www.grassley.senate.gov/imo/media/doc/defense_dept.inspectorgeneraltograssleyjedi.pdf.

¹⁰ Email from Ruth Vetter, Dir. Of Standards of Conduct Off., to Kevin Sweeny, Chief of Staff to the Sec'y (Oct. 18, 2017) (emphasis added) (on file with author); see also Letter from Charles E. Grassley, Ranking Member, S. Comm. on Judiciary, to Sean O'Donnell, Acting Inspector Gen., Dep't of Def., at 10 (Aug. 31, 2021), https://www.grassley.senate.gov/imo/media/doc/grassley_to_defense_dept.officeofinspectorgeneraljedireportfaults.pdf.

These factors are important because they highlight what circumstances or activities create a conflict of interest, or at the very least, conduct that would “rise to an appearance of impropriety.”¹¹ When applied to Donnelly’s conduct, which DoD OIG had evidence of at the time of the JEDI report, it is clear that her conduct satisfies several of these factors. Despite this, DoD OIG failed to note for the reader that any edit had been made to the substance of the opinion. Even with an entire paragraph missing, you continue to assert that the omission of this information was inconsequential and would have somehow made the final JEDI report “duplicative, unwieldy” or “not a work of independent oversight.”¹²

As such, it appears that at least two times in the same report, DoD OIG materially misrepresented SOCO opinions to support the report’s conclusions. This is unacceptable by any metric. I request an explanation of these decisions, who made them, and the rationale for omitting the content, because any reader of the JEDI report would clearly obtain a false impression of the full SOCO opinions as written.

Other documents obtained via third-party FOIA requests raise new questions regarding the integrity of the DoD OIG’s investigative process and resulting JEDI report. Specifically, newly obtained email communications from Sally Donnelly, a conflicted former AWS lobbyist turned senior advisor to the former Secretary of Defense, show that while employed at DoD she and a current AWS sales representative discussed “landmines [to] avoid” during an upcoming “sales pitch” with the Secretary of Defense, as well as communications between Donnelly and other DoD employees where employees state how “[Donnelly] is already working” to “crush bureaucratic impediments” to the JEDI contract.¹³ The DoD OIG’s report failed to mention these emails, which illustrate that conflicts infected the JEDI procurement process and Donnelly should have been recused from all JEDI matters in light of her previous work for AWS.

¹¹ *Id.*

¹² Letter from Sean O'Donnell, Acting Inspector Gen., Dep't of Def. to Charles E. Grassley, Ranking Member, S. Comm. on Judiciary (Sept. 15, 2021), https://www.grassley.senate.gov/imo/media/doc/defense_dept_inspectorgeneraltograssleyjedi.pdf.

¹³ Attachment E; E-mail from Redacted DoD Employee to Sally Donnelly, Senior Advisor, Dep't of Def. (Aug. 10, 2017) (“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.”) (emphasis added) (on file with author).

From: Raj Shah [mailto:(b) (6)]
Sent: Friday, August 25, 2017 1:07 PM
To: Mikolay, Justin SES SD
Cc: Donnelly, Sally SES SD
Subject: Fwd: Cloud Computing (UNCLASSIFIED)

Justin, Sally:

We'll have a revised doc to you soon, but want to share the feedback from the guy leading our software efforts. It is crucial that the sd memo crush the bureaucratic impediments. As most things, this is not a technology problem.

Raj

From: Mikolay, Justin SES SD
To: "Raj Shah"
Cc: Donnelly, Sally SES SD
Subject: RE: Cloud Computing (UNCLASSIFIED)
Date: Friday, August 25, 2017 4:22:19 PM

Amen. This is a great note from Enrique. Sally is already working angles with this note providing but targeting data (who to crush) and ammunition (reason to crush)....

I have also requested copies of underlying documents regarding Donnelly's sale of SBD Advisors to still-unknown individual(s) and have only received heavily redacted documents.¹⁴ As you are aware, Donnelly worked at DoD under General Mattis before he became Secretary. She left DoD, founded SBD Advisors, and took on AWS as a client. Prior to returning to DoD a second time, Donnelly sold her SBD shares to unknown individuals. Donnelly then received payments from that sale while she worked at DoD and assisted the AWS procurement process. The un-redacted versions of these documents are relevant as they may show who bought SBD advisors from Donnelly and could illustrate additional conflicts of interest concerns.¹⁵

During the call with my staff on September 20, 2021, DoD OIG leadership conveyed that they were proud of the report and that no one who had participated in it had raised concerns with the process or final product. They also reiterated that they had never heard of "rounding," a term used by whistleblowers to denote the watering down of reports for political convenience or other purposes. These positions do not match statements made to my office by multiple whistleblowers or information found in government records provided to my office. For this reason, I am requesting a list of the individuals (full or part-time) who have, for any reason, departed the DoD OIG during the period of January 1, 2019, to the date of this letter. When preparing this information, please provide the following: full name; the person's respective office (e.g., Audit, DCIS, OCO, Evaluations, etc.); the person's last position held and relevant title; and if the individual continues to be employed by the Executive Branch, please identify that agency.

¹⁴ Attachment C (Redacted documents from DoD OIG).

¹⁵ SBD Advisors appears to no longer be in business and therefore any release of sale documents could not impact any current business operations.

The questions regarding both this report and the JEDI program should be resolved before DoD's Joint Warfighter Cloud Capability (JWCC) program is awarded. For this reason, I also encourage your office and the DoD to meet with me and my staff to address the continuing concerns with JEDI. Should you have any questions please reach out to Daniel Boatright or Quinton Brady 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

cc:

The Honorable Lloyd Austin
Secretary
Department of Defense

Allison C. Lerner
Chairwoman
Council of the Inspectors General on Integrity and Efficiency