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Christopher J. Armstrong

July 27, 2023

Via E-mail (Jackson.Puckey@mail.house.gov and josh_flynn-brown@budget.senate.gov)

The Honorable Charles E. Grassley
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Nancy Mace
United States House of Representatives
1728 Longworth House Office Building
Washington, DC 20515

Re: July 13, 2023 letter to André Pienaar

Dear Senator Grassley and Congresswoman Mace:

On behalf of my client, André Pienaar, I write in response to your letter of July 13, 2023. As you note in your letter, Mr. Pienaar has provided assistance to previous inquiries related to the Department of Defense (“DoD”) Inspector General’s (“DoD IG”) 2020 report on the Joint Enterprise Defense Infrastructure (“JEDI”) Cloud Procurement. This matter has been fully reviewed by the DoD IG, the Government Accountability Office (“GAO”), the U.S. Court of Federal Claims, and the U.S. Court of Appeals for the Federal Circuit—and all relevant claims have been dismissed. Nevertheless, we appreciate this opportunity to further respond to questions on this matter and dispel the continued falsehoods being disseminated by the Oracle Corporation (“Oracle”).

Oracle has lobbied for years to secure congressional support for a debunked conspiracy theory that in reality is a common business grievance against a competitor, Amazon. Oracle has also aired these grievances with the Office of Management and Budget, the Council of Inspectors General on Integrity and Efficiency, and the Department of Justice. Each relevant authority rejected this debunked conspiracy theory.

Our letter states the facts of the matter in question, responds to statements in Senator Grassley's October 24, 2022 letter to Secretary Lloyd J. Austin and Acting Inspector General Sean O'Donnell, and also responds to your request.

The Facts

The allegation at the root of the debunked conspiracy is that Mr. Pienaar sought to obtain an improper advantage for Amazon Web Services ("AWS"), of which his wife, Teresa Carlson, was an executive, in connection with the JEDI Cloud Procurement. This allegation is based on the well-established falsehood that Mr. Pienaar sought this influence by purchasing Sally Donnelly's business, SBD Advisors, when she joined DoD as an advisor to Secretary Jim Mattis. This claim has been widely circulated by Oracle in an effort to show why the company lost the since-cancelled JEDI contract, which AWS also lost (it was awarded to Microsoft).¹ The claim is completely and totally false. It has been debunked by every neutral arbiter who has reviewed the matter, including:

- The DoD OIG concluded—in a 300+ page report issued after conducting more than 80 interviews and reviewing 32 gigabytes of documents and information—that there is “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”; that there is “no evidence that Ms. Donnelly was involved in or influenced any aspect of the JEDI Cloud procurement”; and that there was no evidence to substantiate complaints of ethical improprieties against Ms. Donnelly.²
- The DoD OIG, in response to questions from Senator Grassley, reiterated its conclusions—and the extensive investigation of which they were the product—and specifically explained that it “found no evidence that Secretary Mattis’ meetings with Amazon differed substantively from similar meetings with Amazon’s industry competitors,” that Ms. Donnelly did not have “any role” in “shaping or developing the JEDI Cloud acquisition,” and that Ms. Donnelly “complied with her disclosure

¹ It would not be in the best interests of our country's national security to allow an Oracle-driven propaganda campaign focused on a repeatedly debunked conspiracy theory to distract from the reality that Oracle has simply been unable to compete effectively in the free market. In a recent report by MarketWatch, one analyst made clear that “Amazon remains the de facto cloud provider, but Azure does not appear far behind,” Thill said, noting that 48% of CIOs surveyed reported that AWS was their primary cloud provider, while 43% said Azure, 8% said GCP and 3% said Oracle.” Available at <https://www.marketwatch.com/story/ai-is-driving-big-gains-in-tech-but-it-is-not-as-great-a-factor-in-cloud-spending-9bcab5c3>.

² Inspector General of the Department of Defense, Report on the Joint Enterprise Defense Infrastructure (JEDI) Cloud Procurement 7, 9, 200-01 (Apr. 13, 2020) [hereinafter, “Inspector General JEDI Report”], available at [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)

obligations.”³ It also specifically rejected the accusation that “the DoD OIG downplayed Ms. Donnelly’s involvement in a ‘sales pitch’ meeting between Secretary Mattis and Amazon and Mr. Bezos in August 2017, and that this meeting had broader implications on the formation of the JEDI Cloud procurement process.”⁴

- The GAO rejected Oracle’s protest of the JEDI Cloud Procurement and specifically rejected Oracle’s assertion that conflicts of interest gave Amazon/AWS an unfair competitive advantage in the Procurement.⁵
- The Court of Federal Claims likewise rejected Oracle’s protest of the JEDI Cloud Procurement, specifically affirming as “reasonable and well supported” the Contracting Officer’s conclusion that Amazon/AWS did not obtain any improper “competitive advantage.”⁶
- The U.S. Court of Appeals for the Federal Circuit affirmed the Court of Federal Claims’ decision rejecting Oracle’s protest of the JEDI Cloud Procurement, specifically rejecting “the extensive array of claims raised by Oracle.”⁷
- Oracle also presented its same allegations that conflicts of interest gave an unfair competitive advantage to Amazon/AWS in the JEDI Cloud Procurement process to the Acting Director of the Office of Management and Budget (on April 20, 2020), the Executive Chair of the Council of Inspectors General on Integrity and Efficiency (on April 20, 2020), the U.S. Attorney’s Office for the Eastern District of Virginia (on June 23, 2020), and the Public Integrity Section of the Department of Justice’s Criminal Division (on September 17, 2020), and those offices all appropriately rejected Oracle’s claims.

Mr. Pienaar’s work to arrange the sale of SBD Advisors was done to assist Ms. Donnelly in her diligent efforts to comply with all applicable ethics rules. At no point was this effort intended to benefit AWS in any federal contract, at no point did it benefit AWS in any federal contract, and any claims to the contrary are false. We are also currently unaware of any instance in which any relevant information that was required to be disclosed was withheld during this process. None of these facts have prevented Oracle from attempting to spread its conspiracy theories through Congress and in the media.

³ Letter from Sean W. O’Donnell (Acting Inspector General, Department of Defense) to Hon. Charles Grassley & Hon. Richard Durbin at 3-4 (Sept. 15, 2021) [hereinafter “Inspector General Letter to Sen. Grassley”], available at https://www.grassley.senate.gov/imo/media/doc/defense_dept_inspectorgeneraltograssleyjedireview.pdf.

⁴ *Id.* at 3.

⁵ In re Oracle America, Inc., B-416657; B-416657.2; B-416657.3; B-416657.4 (GAO Nov. 14, 2018), available at <https://www.gao.gov/assets/b-416657%2Cb-416657.2%2Cb-416657.3%2Cb-416657.4.pdf>.

⁶ Oracle Am., Inc. v. United States, 144 Fed. Cl. 88, 125-26 (2019).

⁷ Oracle Am., Inc. v. United States, 975 F.3d 1279, 1302-03 (Fed. Cir. 2020).

Due to reasons known only to Oracle and its leadership, rather than devoting its resources to taking on their competitors and providing superior service to the federal government and taxpayers, Oracle has chosen to spend its time, resources, and reputation on Capitol Hill to attack my client, Mr. Pienaar, his wife Teresa Carlson, and public servants such as Ms. Donnelly.

Senator Grassley's June 24, 2022 Letter to Mr. Pienaar and October 24, 2022 Letter to Secretary Austin

On June 24, 2022, Senator Grassley wrote to Mr. Pienaar requesting certain information related to the sale of SBD Advisors.⁸ Following my client's full cooperation with this inquiry, including an in-depth briefing from counsel on July 26, 2022, Senator Grassley wrote to Secretary of Defense Lloyd J. Austin and Department of Defense Acting Inspector General Sean O'Donnell on October 24, 2022 ("October letter") relaying his views on these transactions and their alleged relationship with the Department of Defense's former JEDI Cloud procurement.

Because your offices show continued interest in this matter, I will first address a number of matters from the Senator's October letter:

1. On the first page of the October letter, Senator Grassley wrote "[a]s disclosed in her [Office of Government Ethics ("OGE")] Form 278e, dated May 17, 2017, Ms. Donnelly reported a payment related to the sale of SBD Advisors LLC for \$390,000. On her second OGE Form 278e, dated May 4, 2018, and filed two months after her resignation from the DoD, Ms. Donnelly reported the second, third, and final partial payments from the sale of SBD Advisors LLC totaling \$1,170,000, which she received while in federal service. Notably, both of Ms. Donnelly's OGE Forms failed to disclose the identity of the purchaser of SBD Advisors LLC."
 - a. It is important to note that OGE Form 278e does not require the filer to disclose purchasers, nor does it provide any indication that such information is required or expected.⁹
 - b. On pages 49-50 of Ms. Donnelly's interview with the DoD OIG: "Q: And who did you sell SBD Advisors to? A: André Pienaar was the organizer of the sale of SBD."¹⁰
 - c. On page 200 of the DoD OIG report, "Ms. Donnelly legally divested all of her SBD Advisors membership units before she accepted the position as Senior

⁸ Letter to Secretary Austin and Acting Inspector General O'Donnell, available at https://www.grassley.senate.gov/imo/media/doc/grassley_to_defense_deptdefenseinspectorgeneralsbdadvisorsllcconflictsofinterestreview1.pdf.

⁹ Available at <https://www.oge.gov>

¹⁰ Available at https://www.dodig.mil/Portals/48/DODOIG-2020-001050%201st%20Interim%20response%20records_1.pdf

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.”¹¹

2. The October letter also states on its second page that, “[k]nowledge of the entity that purchased Ms. Donnelly’s firm is a relevant and central to the question of whether a conflict of interest existed and could have substantively affected the protocols required to wall off Ms. Donnelly from potential and actual conflicts of interest while employed at DoD.”
 - a. Per the OIG report on page 194, there was already a process in place to wall off Ms. Donnelly from potential conflicts: “Ms. Donnelly was not Secretary Mattis’s scheduler, nor was she the decision-maker regarding his acceptance of meeting or dinner invitations.” There was a process where members of Sec. Mattis’ staff would receive input from parts of the office, including the Defense Standards of Conduct Office (“SOCO”) ethics officials, to make sure there were legal/ethical purposes satisfied. Chief of Staff Sweeney would vet the request after that, and refer to Sec. Mattis for final approval. Scheduling and logistics of meetings happen thereafter.
 - b. That same protocol protected from any potential conflict of interest with AWS, per page 195 of the OIG report: “As an example of Ms. Donnelly’s actions regarding Amazon access to Secretary Mattis, on April 17, 2017, an Amazon representative e-mailed Mr. Anthony DeMartino, former Chief of Staff to Deputy Secretary Shanahan and former Deputy Chief of Staff to Secretary Mattis, and asked for an April 27, 2017, meeting between Secretary Mattis and Mr. Bezos. Mr. DeMartino subsequently consulted Ms. Donnelly about Amazon’s request. On April 18, 2017, Ms. Donnelly sent Mr. DeMartino an e-mail stating, “We should stand back and let the [Secretary of Defense’s] schedule process work—we should take no action to help. Not our place, not proper.” Mr. DeMartino replied to Ms. Donnelly, “Roger. My thoughts exactly.”
3. According to Ms. Donnelly’s sworn testimony to the DoD OIG, “André Pienaar was the organizer of the sale of SBD.” DoD OIG never asked Ms. Donnelly to expand on what she meant by “organizer” of the sale.
 - a. André Pienaar did not have interest in purchasing Ms. Donnelly’s company. Pienaar was helping a longstanding business partner who needed to sell her company quickly to comply within DoD ethics rules. Pienaar agreed to organize

¹¹ DoD IG report, at 200.

the sale in less than three days with the intention of selling all shares to other investors, which Pienaar subsequently did.

- i. In sworn testimony with DoD OIG Donnelly was asked “Q: So, you said you sold 80 percent of SBD. Was there another partner? A: Yes, ma' am. It was André Pienaar.”
4. Page four of the letter states, “[o]n January 19, 2017, three days before she entered federal service, Ms. Donnelly sold her 80 percent stake in SBD Advisors LLC to VMAP Investor LLC for \$1,560,000 paid in two installments of \$780,000. According to the Purchase and Sale Agreement, the first payment was supposed to be made within two weeks of execution of the Agreement and the second payment within six months of the first payment. However, according to DoD OIG, Ms. Donnelly ‘did not receive payment for SBD Advisors LLC as indicated in the Purchase and Sale Agreement,’ but instead received four installments of \$390,000 paid on January 2017, March 2017, July 2017, and March 2018.”
 - a. Ms. Donnelly sold her 80% stake (100% of her shares) and was free and clear of SBD Advisers when she joined the DOD.
 - b. The payments she received subsequently were unrelated to the performance of SBD Advisers and due to her regardless of what happened to the business.
 - c. On January 19, 2017, Donnelly received the first payment of \$390,000 before entering the DOD.
 - d. André Pienaar had to find additional investors to raise the capital needed to complete the financing of the sale, which is why the deal was structured with additional installments. Ms. Donnelly had no idea and no financial interest in who those investors might be; she was owed a set amount via installment payments from the entity that purchased SBD Advisors no matter who VMAP may have turned to later in order to finance that purchase.
 - e. As detailed on pages 190-91 of the DoD OIG report, Donnelly received the installments of the remainder of the initial deal in March of 2017 (\$390,000), July 2017 (\$390,000) and March of 2018 (\$390,000).
5. Page 5 of the October letter states that “[d]espite repeated requests, Mr. Pienaar’s counsel refused to identify this investor, but described him or her as someone with experience in the mining industry who may have also served on the board of C5 Capital.”

- a. Again, Mr. Pienaar agreed to fully cooperate with Sen. Grassley and his legal counsel met with Senator Grassley's staff on July 26, 2022, and gave them access to an unredacted copy of the agreement the day prior, on July 25.
6. Page six of the letter states, "[f]or example, according to DoD OIG, '[s]ometime in March 2017, Ms. Donnelly received the second partial payment of \$390,000 from her sale of SBD Advisors membership units."
 - a. This was scheduled from the sale of the SBD Advisors prior to Donnelly entering DoD and not a new payment.
 - b. Per the OIG report pg. 202 "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."
7. Page six also states, "[a]round this same time, Ms. Donnelly attended a dinner in the United Kingdom with Secretary James Mattis, Mr. Pienaar, and Theresa Carlson, then-Vice President of Amazon Worldwide Public Sector Business, among others."
 - a. The dinner was hosted in honor of the late Duke of Westminster with whom Secretary Mattis worked on a voluntary basis to build the new UK Defense and Rehabilitation Center (DNRC). Secretary Mattis had missed the Duke's Memorial Service because of his engagement with the Trump transition team.
 - b. General Lamb is listed as the Host of this dinner , and the invitation and attendees worked its way through the ordinary course for approval at DoD. No cloud discussion occurred during the dinner, per Kevin Sweeney, the DoD Chief of Staff.¹²
 - c. Page 173 of the DoD OIG report states that, in reviewing the itinerary for the UK trip, "The SOCO Attorney wrote in an e-mail, "no ethics objections" for Secretary Mattis' itinerary and the dinner in the U.K. with the named attendees."
8. Page six also states: "Notably, at this dinner, Ms. Carlson, on behalf of Mr. Jeff Bezos, then-President and Chief Executive Officer of Amazon, requested a meeting with Secretary Mattis for the purposes of discussing Mr. Bezos' 'thoughts/observations on DoD's relationship with the tech [technology] sector.'" This suggests that Ms. Carlson made this request.

¹² DoD IG report, at 173.

- a. The quoted text is from an email sent by an Amazon representative on April 17, 2017 - it is not a quote from Ms. Carlson, per page 176 of the DoD OIG report.
 - b. Secretary Mattis told OIG investigators that he did not recall “a single mention of the cloud or of Amazon” at the dinner, per page 173 of the DoD OIG report.
 - c. Admiral Craig Faller, who attended the dinner, told DoD OIG investigators that he “heard no discussion about cloud computing during the dinner,” per page 174 of the DoD OIG report.
 - d. When Ms. Carlson was introduced to Sec. Mattis, she was introduced as part of AWS Cloud computing, to which Mattis then responded, “that he could not envision the DoD moving to the cloud because of potential security issues,” per page 174 of the DoD OIG report.
9. Page six also quotes an AWS Public Sector Blog post stating, “AWS is also one of several organizations that support two C5 startup accelerator programs, the Peacetechn Accelerator in Washington, D.C. and the Cloud 10 Scalerator in Bahrain, to help early-stage businesses with mentorship, training on cloud computing skills, and access to potential investors.... C5 [also] became part of the AWS Partner Network Channel Reseller Program for one deal supporting the Bahrain Information and eGovernment Authority,’ in April 2017.”
 - a. The Peacetechn Accelerator was partnered with the United States Institute for Peace to support the entrepreneurs from conflict or post conflict countries to build startups that could help bring peace to their countries. The Bahrain accelerator was focused on supporting female startup entrepreneurs in the Gulf region.
 - b. Amazon is the fifth-largest company in the world. It has hundreds, if not thousands, of partners. Amazon is one of several companies that supported the Peacetechn and Cloud 10 Scalerator.
 - c. Regarding the Bahrain Information and eGovernment Authority, this involved one payment of \$3,000 related to Amazon Cloud for use in the Bahrain accelerator.
10. Finally, the report states: “Taken together, while in government service, Ms. Donnelly received payments from VMAP Investor LLC—an entity directly linked to two senior C5 officials, a company connected to Amazon. These facts were not included in DoD or DoD OIG’s conflicts analysis.”
 - a. The DoD OIG’s conflict analysis extensively details both of these facts on pages 188-201.

- b. The OIG Conclusion summary of the report refutes these claims. On page 200, the DoD OIG writes, “[w]e did not find evidence that she failed to disclose payments from SBD Advisors on her OGE 278e, 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.”
- c. On page 201, the DoD OIG concludes, “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. In addition to the disclosure of SBD Advisors, she submitted a Periodic Report consistent with OGE procedure to disclose financial information involving an entity not related to AWS or SBD Advisors and had no connection to the JEDI Cloud procurement. We likewise found no evidence that she had an ongoing or undisclosed financial relationship with C5 Capital or Amazon and its affiliates that would have required her to recuse from any of her official duties during her service in the DoD.”

Your July 13, 2023 Request

Your recent letter requests a large amount of information, most of which is already known. Nonetheless, we are happy to respond to these requests.

- The first request is for an unredacted copy of the January 2017 Purchase and Sale Agreement. This can be easily found as Exhibit D in Senator Grassley’s October letter. We previously shared an unredacted copy in confidence on July 25, 2022 – in an effort to protect the privacy of individuals who had no business before the United States government - only to find it published online. If you are unable to read that text please let us know and we can provide it yet again.
- The second request is for “[a]ll records between and among you or any party associated with C5 or VMAP Investors LLC, and Sally Donnelly, Anthony DeMartino, or any DOD official, related to Amazon or the JEDI cloud procurement.” After an extensive search, we found no relevant records.
- The third request is for “[a]ll records between and among you or anyone at C5 or its subsidiaries or affiliates and anyone with anyone at Amazon, related to Sally Donnelly, SBD Advisors, ITC Global, and the JEDI cloud contract.” After an extensive search, we found no relevant records.

- Your fourth request is 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.” Details of all the relevant payments are already in your possession and in the public domain. No payments were made other than those already disclosed by Sally Donnelly to the DOD.
- Your fifth request is for “financial records of all payments from Amazon, or any person or entity acting on behalf of Amazon, received by you, C5 Capital, or any of its subsidiaries, officers, or employees at any time from 2015 to the present.” C5 Capital has never received any funds of any kind from Amazon. C5 Accelerate, the division of C5 that ran C5’s accelerator programs, received matched funds from Amazon in line with its standard accelerator support program. In other words, to receive these funds from Amazon, C5 Accelerate had to spend an equivalent amount on the accelerator program. In Bahrain this was \$340,000 in 2017 and for the Peacetechn Accelerator \$300,000 in 2018.
- Your sixth request is for “financial records relating to any consideration you paid in connection with the sale of SBD Advisors....” We have already briefed Senator Grassley’s staff on this issue and have no new information.
- Your seventh request is for “all agreements and financial records relating to and consideration paid to Pallas Advisors (or any related entity) from Amazon (or any related entity), or C5 (or any related entity).” C5 has never had any dealings with Pallas Advisors.
- Your eighth, and final request, is impossibly broad. The request is for “all records reflecting communications between and among you or your representatives and any CS entity or person in connection with SBD Advisors.” I welcome clarification on what this request means.

Thank you for this opportunity to clarify the facts on this matter.



Christopher J. Armstrong

The Honorable Charles E. Grassley

The Honorable Nancy Mace

July 27, 2023

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