



DEPARTMENT OF DEFENSE
6000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-6000

CHIEF INFORMATION OFFICER

NOV 18 2020

The Honorable Charles E. Grassley
Chairman
Senate Committee on Finance
United States Senate
Washington, DC 20510-6200

Dear Mr. Chairman:

In response to your letter dated October 5, 2020, the Department of Defense Chief Information Officer (DoD CIO) provided your staff with a briefing on October 22, 2020 to answer the following questions regarding the findings of the Office of the Inspector General report regarding the DoD's general purpose cloud initiative, known as the Joint Enterprise Defense Infrastructure (JEDI) Cloud. As a follow-up to the briefing we have been asked to provide a written response on the information that was briefed. The DoD CIO's written response to your specific questions are as follows:

- 1. How much in total transaction costs has the Department spent on the JEDI program for the following categories: acquisition personnel, technical expertise, and administrative support? In your response, please address costs including, but not limited to, personnel, planning, market research, contract solicitation, drafting, proposal evaluation, negotiations, solicitation revision, litigation, and corrective actions.*

DoD CIO Response: For early activities, such as market research, requirements development, and solicitation drafting, there was too much variability in participation to estimate personnel costs. Offices across the entire department participated in early activities, and those offices shifted depending on the activity (for example, offices with expertise in cyber security are different than those with operational experience at the tactical edge). For most individuals, participation in JEDI was only one task of many that comprised their normal duties. Participation was intermittent, surging at various points, such as review of a draft solicitation.

The Department is better able to estimate personnel costs during the evaluation phase of JEDI, which began when initial proposals were received on October 12, 2018. This is because, in accordance with the FAR, only individuals listed in the approved source selection plan are permitted to review proposals. For hourly wage rates, the rate for a GS-13 / Step 5 is used, which is consistent with how DoD estimates personnel costs for budgetary purposes. The time of the attorneys who supported this effort over the course of standard contract legal work and litigation defense is over and above the figures provided here.

- Initial Proposals received until Competitive Range Determination: October 12, 2018 - April 10, 2019 = \$1,914,918.80
- Discussions - FPR submission: April 11, 2019 - September 5, 2019 = \$1,464,289.20
- FPR Evaluation - Award: September 6, 2019 - October 25, 2019 (original award date) = \$605,274.00
- Amazon Post-Award Protest - Re-award: February 14, 2020 - September 4, 2020 = \$1,352,718.00
- Total = \$5,337,200.00

1a. *How much of that cost is due to the issues that arose from allegations of conflicts of interest or other issues that may have caused significant delays and award disputes?*

DoD CIO Response: Litigation related to JEDI covered an array of topics with conflicts of interest being one element. None of the litigation was based on conflicts of interest alone; therefore, all litigation activities would have occurred even in the absence of any allegations about conflicts of interest.

On February 12, 2019, the contracting officer paused the JEDI acquisition when the Department learned of something that could have had a significant impact on the conflicts of interest analysis to conduct a conflicts of interest investigation. The investigation was completed on April 4, 2019, at which point JEDI activities resumed. This accounted for a 52-day delay.

2. *At the exponential rate in which technological advancements occur, especially relating to cloud and artificial intelligence technology, are the contract requirements that were written over two years ago still up to date? If not, what steps have you taken to get them up to date?*

DoD CIO Response: Yes, all of the contracts requirements that were previously written are still up to date. The JEDI Cloud contract requires commercial parity with the Cloud Service Provider's (CSP's) public offering to ensure DoD has full access to the latest innovations being offered at equivalent costs of the other services relevant to the commercial pricing. The JEDI Cloud contract also includes packages that are intended to provide direct customer support. These two factors will enable DoD to keep pace with commercially available cloud technologies and provide industry knowledge, best practices, and expertise.

One of the key goals of the JEDI Cloud contract is that the Service Catalog at all classification levels is as close to the commercially available catalog for the CSP as DoD security requirements will allow. The CSP must immediately notify the JEDI Cloud Contracting Officer for incorporation of the new services into the contract, when new or improved Infrastructure as a Service (IaaS), Platform as a Service (PaaS), or Cloud Support Package services are made publicly available. This requirement ensures the JEDI Cloud offerings stay aligned with current commercial technology.

- 2a. *In the past 6 months has the Department assessed the market's current capabilities and trends to ensure the Department receives the most appropriate and advanced equipment and is aligning with industry standards?*

DoD CIO Response: If at any time the DoD determines that the JEDI Cloud no longer addresses the needs of the Department, the Department may elect to pursue numerous off ramps that the JEDI Cloud contract structure allows. These include:
The Department may choose to stop placing task orders against the contract. The CSP is guaranteed only \$1.0M in task orders of the \$10B contract ceiling value; and
The Department may choose not to exercise follow-on contract options. Only the two-year base period is guaranteed at time of award.

DoD continuously works with industry and maintains lines of communication to ensure that the Department receives the most appropriate and advanced technologies and is in alignment with industry standards. Through exchanges like our DoD DevSecOps Community of Practice (which is open to industry) weekly industry technical exchange meetings and representation in nongovernmental, international and allied IT standards bodies, DoD maintains visibility of the latest capabilities. We also continue to track pilot efforts to ensure that emerging capabilities can effectively deliver and scale at the magnitude required by the Department. For JEDI specifically, the contract requires the vendor to maintain parity between the vendor's commercial services and those offered to the Department. The JEDI contract will ensure that the Department continues to capitalize on on-going commercial innovation and receives the latest cloud services available in the marketplace.

DoD also continues to explore and pursue other cloud acquisitions, maintaining a competitive market for new and innovative services. Recent acquisitions include Air Force Cloud One and Defense Manpower Data Center Oracle Cloud IaaS and SaaS with continued pursuit of the Defense Enterprise Office Solution (DEOS) and the Intelligence Community's Commercial Cloud Services Enterprise (C2E).

3. *Can the Department cite to any other major procurement program that has moved forward with the contract award process despite Department employee conflicts of interest issues?*

DoD CIO Response: Given the federated nature of how acquisition is distributed across the Department, and there being no requirement in Law or Regulation for centralized reporting, we do not have a way to track other major procurement programs having conflicts of interest issues.

The GAO, Federal Appeals Court, as well as the lower court, Court of Federal Claims, and the DoD Office of the Inspector General upheld the Department's conclusion that none of the alleged conflicts of interest impacted the integrity of the procurement. Any suspected ethics issues were appropriately addressed by the JEDI contracting officer and referred to the appropriate authorities for further investigation. We are unable to

comment on individual personnel actions, but can refer you to the DoD IG report that examined this issue extensively.

- 3a. *What were the costs of the cited programs and how do they compare in complexity to the JEDI program?*

DoD CIO Response: As stated in the response to question three, there was no way to track the information.

4. *Generally, after a government contract is awarded, an opportunity is provided to those applicants that did not receive the award to be briefed by the agency on why another bid was selected over theirs. Why was the normal debriefing process not followed in this instance?*

DoD CIO Response: The Federal Acquisition Regulations and DoD Policy provides that the Contracting Officer is responsible for determining how the debriefing is conducted. The FAR permits a variety of debriefing formats, including written and oral. AWS received a thorough written debrief including a comprehensive set of debriefing documents and answers to follow-up questions. The same information would have been communicated regardless of how the debrief was conducted. The WHS contract office routinely uses the written debriefing format.

5. *Why did the Department not initially comment on the OIG's JEDI draft report?*

DoD CIO Response: In late February, the IG forwarded the draft to the Office of General Counsel, as opposed to, the head or heads of the affected components (in this case USD(A&S), CIO, DDS, and WHS) as it normally does. In providing the draft to OGC, the IG made clear it was being provided for the express and limited purpose of OGC reviewing proposed redactions of Source Selection Information and other privileged communications. The IG requested that individuals in OGC who received the draft should not distribute or release the draft any broader than necessary to do the review of redactions. OGC honored that request, and when providing feedback on the redactions OGC commented that it would be inappropriate to comment further, given that communication with knowledgeable and affected individuals across the Department was interdicted. Due to this, the Department was unable to comment on this report in draft as it does with other reports we receive.

6. *Why has the Department not commented on the OIG's JEDI report since the document's publication?*

DoD CIO Response: The Departments response to all of OIG's suggestions were responded to internally, as it is not standard practice to publicly release specific comments to OIG findings. Additionally, a public statement was also issued.

The public statement was as follows: The Inspector's General final report on the JEDI procurement confirms that the Department of Defense has handled the JEDI

procurement process appropriately and consistent with the law. The IG's team found that there was no record of influence by the White House or DoD leadership on the source selection board that made the ultimate vendor selection. This report should finally close the door on the series of corporate-driven attacks on the career procurement officials who have been working tirelessly to get the valuable JEDI cloud computing capability into the hands of our frontline warfighters while continuing to protect American taxpayers.

7. *The OIG recommended "the Acting Director for Contract Policy, Defense Pricing and Contracting, consider developing and implementing appropriate policy to require some level of documentation and analysis supporting key acquisition decisions, including any legal reviews and advice, for contracts that exceed the \$112 million threshold established by statute." What steps has the Department taken to close that recommendation?*

DoD CIO Response: DPC, Contract Policy is conducting a review of relevant FAR, DFARS and Service's acquisition regulation supplements. Additionally, we are collecting Service and Defense Agency supplemental guidance and policy to their contracting workforce. This background will enable a thorough review across the DoD of the regulation, policy and guidance supporting determinations and the documentation needed to support strategies to utilize single award IDIQs as noted in the DoD IG recommendation.

8. *The OIG recommended "the Chief Management Officer, in coordination with the [Department] General Counsel, consider administrative action against appropriate individuals for failing to review the redacted reports and attachments to the debriefing e-mails, and disclosing proprietary, proposal, and source selection information"? What steps has the Department taken to close that recommendation?*

DoD CIO Response: The DoD has thoroughly reviewed and takes seriously the recommendations made for administrative action. We have responded to the OIG on steps taken pursuant to this recommendation. We are unable to comment on individual personnel actions.

9. *The OIG recommended "the Principal Deputy General Counsel, as Chair of the [Department] OGC/Defense Legal Services Agency Professional Conduct Board, in coordination with the [Washington Headquarters Services (WHS)] General Counsel, determine whether disciplinary action should be taken against appropriate individuals under attorney performance standards for failing to review the redacted reports and attachments to the debriefing e-mails, and disclosing proprietary, proposal, and source selection information." What steps has the Department taken to close this recommendation?*

DoD CIO Response: The Professional Conduct Board conducted a thorough review of the matter, as recommended. The final decision after the review was that there was no cause to take steps in the nature of professional discipline. This conclusion was communicated back to the IG.

10. *The OIG recommended “the Director of the WHS Acquisition Directorate, in coordination with the WHS General Counsel: “[r]equire training for WHS officials handling acquisition-related matters regarding the contents of the [Department] Source Selection Procedures Debriefing Guide with special attention to Section A.8.3, Information Not Appropriate for Disclosure[;]” and “[d]evelop a standard redaction policy applicable to all acquisitions to eliminate the ambiguity regarding redactions of source selection information, particularly Source Selection Team names.” What steps has the Department taken to close these recommendations?*

DoD CIO Response: WHS AD, in conjunction with WHS OGC, conducted an all-hands ethics training on June 11, 2020 which included “Information Not Appropriate for Disclosure” and redaction of source selection information. Furthermore, WHS AD implemented a Procurement Notice which provides a standard redaction policy applicable to all acquisitions.

11. *The OIG recommended the “Chief Information Officer incorporate a record of Mr. Ubhi’s misconduct into his official personnel file.” What steps has the Department taken to close this recommendation?*

DoD CIO Response: The responsible DoD office(s) considered the OIG’s recommendations and took the appropriate actions; however, we are unable to comment on individual personnel actions.

12. *The OIG recommended that the “Chief Information Officer notify the [Department] Consolidated Adjudications Facility of Mr. Ubhi’s misconduct with regard to any security clearance he may hold or seek in the future.” What steps has the Department taken to close this recommendation?*

DoD CIO Response: The responsible DoD office(s) considered the OIG’s recommendations and took the appropriate actions; however, we are unable to comment on individual personnel actions.

13. *The OIG recommended “the Undersecretary of Defense for Acquisition and Sustainment consider appropriate action for Ms. Cummings’ ethics violations, including potential counseling and training.” What steps has the Department taken to close this recommendation?*

DoD CIO Response: The responsible DoD office(s) considered the OIG’s recommendations and took the appropriate actions; however, we are unable to comment on individual personnel actions.

14. *The OIG recommended “Chief Information Officer review the Cloud Computing Program Office’s procedures for identifying and mitigating potential conflicts of interest and take appropriate action as a result of this review.” What steps has the Department taken to close this recommendation?*

DoD CIO Response: The Cloud Computing Program Office followed all of the DoD recommendations for managing and identifying conflicts of interest. In the case of Mr. Ubhi, the applicable processes were applied; however, Mr. Ubhi made a deliberate attempt to deceive DoD.

Thank you for your continued support to the warfighter. The Department looks forward to future discussions with Congress on the implementation of DoD's Cloud Strategy.

Sincerely,

A handwritten signature in black ink, appearing to read "Dana Deasy", written in a cursive style.

Dana Deasy

cc:
The Honorable Ron Wyden
Ranking Member