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## United States Senate

COMMITTEE ON FINANCE

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October 5, 2020

### VIA ELECTRONIC TRANSMISSION

The Honorable Mark Esper  
Secretary of Defense  
3010 Defense Pentagon  
Washington, DC 20301-3010

Dear Secretary Esper:

On April 9, 2019, I sent a letter to then-Acting Secretary of Defense, Patrick Shanahan, regarding my concerns with respect to the Department of Defense's (Department) Joint Enterprise Defense Infrastructure (JEDI) program, alleged conflicts of interest pertaining to those charged with creating its bid, and reported disputes between bidders and the Department.<sup>1</sup> The Department's Office of the Inspector General (OIG) completed a review and provided recommendations in response to members of Congress raising concerns about the JEDI program.<sup>2</sup>

The OIG report found that, at the very least, there was an appearance of impropriety in the formation and design of the JEDI bid proposal.<sup>3</sup> In addition, the OIG report found Department employees had "lied" to the Department regarding their relationship with companies that were expected to bid on, or actively competing for, the JEDI contract.<sup>4</sup> "Lie" is a word not often used by any OIG.

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<sup>1</sup> Letter from Charles E. Grassley, Chairman, S. Comm. on Fin., to Patrick M. Shanahan, Acting Sec'y of Def., Dep't of Def. (Apr. 9, 2019), [https://www.finance.senate.gov/imo/media/doc/2019-04-09%20CEG%20to%20DOD%20\(JEDI\).pdf](https://www.finance.senate.gov/imo/media/doc/2019-04-09%20CEG%20to%20DOD%20(JEDI).pdf); Letter from Dana Deasy on behalf of Patrick M. Shanahan, Acting Sec'y of Def., Dep't of Def., to Charles E. Grassley, Chairman, S. Comm. on Fin. (May 3, 2019), <https://www.grassley.senate.gov/sites/default/files/2019-05-06%20DOD%20to%20CEG%20%28JEDI%29.pdf>; Dep't of Def., Addendum to May 3, 2019 Dep't of Defense Response to Senator Grassley's Letter, GRASSLEY.SENATE.GOV (June 25, 2019), <http://www.grassley.senate.gov/sites/default/files/2019-06-25%20DOD%20to%20CEG%20%28JEDI%20-%20Addendum%29.pdf> (supplementing the Department's May 3 correspondence after a subsequent request from the Senate Committee on Finance).

<sup>2</sup> REPORT ON THE JOINT ENTERPRISE DEFENSE INFRASTRUCTURE (JEDI) CLOUD PROCUREMENT, INSPECTOR GEN. DEP'T OF DEF., REPORT NO. DODIG-2020-079 (Apr. 13, 2020) [hereinafter JEDI OIG Report], [https://media.defense.gov/2020/Apr/15/2002281438/-1/-1/1/REPORT%20ON%20THE%20JOINT%20ENTERPRISE%20DEFENSE%20INFRASTRUCTURE%20\(JEDI\)%20CLOUD%20PROCUREMENT%20DODIG-2020-079.PDF](https://media.defense.gov/2020/Apr/15/2002281438/-1/-1/1/REPORT%20ON%20THE%20JOINT%20ENTERPRISE%20DEFENSE%20INFRASTRUCTURE%20(JEDI)%20CLOUD%20PROCUREMENT%20DODIG-2020-079.PDF).

<sup>3</sup> Jared Serbu, *Pentagon IG Review Finds DoD Improperly Disclosed JEDI Information to AWS*, FED. NEWS NETWORK (Apr. 15, 2020), <https://federalnewsnetwork.com/defense-main/2020/04/pentagon-ig-review-finds-dod-improperly-disclosed-jedi-information-to-aws/>.

<sup>4</sup> JEDI OIG Report, *supra* note 2, at 152-53.

Although the OIG stated the deception did not have a substantive impact on the contract, and relevant authorities have chosen not to pursue charges, the mere appearance of impropriety taints the contracting process and could cause all applicants to wonder if they won or lost a contract due to backroom deals that benefit Department employees.<sup>5</sup> This appearance is further complicated when applicants are not afforded a debriefing process which is typically given after bids are not accepted.

To counteract the appearance of a conflict of interest and to improve the bidding process, the OIG provided several recommendations in the JEDI report, including policy changes and administrative actions against Department personnel. The report, states “[t]he responsible officials did not respond to the recommendations on the draft version of [the] report. Therefore, the recommendations are unresolved. [The OIG] request[s] that the appropriate officials provide comments on this final report.”<sup>6</sup> The Department has failed to do so thus far.

The Department has a duty to the American taxpayer to ensure funds are spent wisely, and contracts are free of costly and unnecessary disputes. To that end, I request you provide a briefing to my staff on how Department regulations will change as a result of the findings in the OIG’s report and answer the following questions by October 19, 2020.

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.
  - a. 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?
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?<sup>7</sup> If not, what steps have you taken to get them up to date?
  - a. 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?
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?

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<sup>5</sup> *Id.* at 154–55.

<sup>6</sup> *Id.*

<sup>7</sup> See Jason Miller, *Time for DoD to Cancel JEDI, Ride the CIA’s Cloud Coattails*, FED. NEWS NETWORK (Apr. 13, 2020), <https://federalnewsnetwork.com/reporters-notebook-jason-miller/2020/04/time-for-dod-to-cancel-jedi-ride-the-cias-cloud-coattails/> (“By now Dana Deasy, the DoD CIO, or David Norquist, the DoD deputy secretary, should be able to see that the time for JEDI has passed and the Pentagon should cut its loses and cancel the contract.”)

- a. What were the costs of the cited programs and how do they compare in complexity to the JEDI program?
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.<sup>8</sup> Why was the normal debriefing process not followed in this instance?
5. Why did the Department not initially comment on the OIG's JEDI draft report?
6. Why has the Department not commented on the OIG's JEDI report since the document's publication?
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."<sup>9</sup> What steps has the Department taken to close that 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"<sup>10</sup> What steps has the Department taken to close that recommendation?
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."<sup>11</sup> What steps has the Department taken to close this recommendation?

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<sup>8</sup> See Steven L. Schooner, *Enhanced Debriefings: A Toothless Mandate?*, 34 NASH & CIBINIC REP. NL ¶ 10 (Feb. 2020) ("[I]t sure sounds like the debriefing following the DOD's critically important, high-value, high-profile procurement isn't destined to be a teaching model for 'enhanced debriefings' at the Defense Acquisition University."); see also Steven L. Schooner, *Postscript II: Enhanced Debriefings*, 34 NASH & CIBINIC REP. NL ¶ 26 (May 2020).

<sup>9</sup> *Id.* at 49.

<sup>10</sup> *Id.* at 93.

<sup>11</sup> *Id.*

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[;]”<sup>12</sup> 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.”<sup>13</sup> What steps has the Department taken to close these recommendations?
11. The OIG recommended the “Chief Information Officer incorporate a record of Mr. Ubhi’s misconduct into his official personnel file.”<sup>14</sup> What steps has the Department taken to close this recommendation?
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.”<sup>15</sup> What steps has the Department taken to close this recommendation?
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.”<sup>16</sup> What steps has the Department taken to close this recommendation?
14. The OIG recommended the “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.”<sup>17</sup> What steps has the Department taken to close this recommendation?

Thank you for your attention to this important matter. Should you have questions, please contact Danny Boatright of my Finance staff at 202-224-4515.

Sincerely,



Charles E. Grassley  
Chairman  
Senate Finance Committee

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 8.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 10.

<sup>17</sup> *Id.*

cc:

Sean O'Donnell  
Acting Inspector General  
Department of Defense  
4800 Mark Center Dr.  
Alexandria, VA 22350

Dana Deasy  
Chief Information Officer  
Department of Defense  
6000 Defense Pentagon  
Washington D.C. 20301