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United States Senate

COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

May 13, 2019

VIA ELECTRONIC TRANSMISSION

The Honorable Patrick M. Shanahan
Acting Secretary of Defense
3010 Defense Pentagon
Washington, DC 20301-3

Dear Acting Secretary Shanahan:

The purpose of this letter is bring to your attention a report from the Department of Defense Inspector General (DoD IG) about egregious price-gouging of the Department of Defense (Department), to insist that the Department take corrective action on recommendations DoD IG made to the Department, and to urge the Department to pursue accountability policies in order to prevent future price-gouging.

On February 25, 2019, the DoD OIG released a report, DODIG-2019-060, detailing the review of parts purchased from TransDigm Group, Inc. (TransDigm).¹ DoD IG reviewed 47 parts that the Department purchased from TransDigm, on 113 contracts, between January 2015 and January 2017.² After reviewing these contracts for price reasonableness, DoD IG determined that TransDigm had overcharged the Department by \$16.1 million on a total of \$29.7 million in contracts.³ Such overcharges are not uncommon at the Department. However, this is not a case of first-impression for TransDigm.⁴ In 2006, DoD IG found that TransDigm had overcharged the Department by \$5.3 million on a total of \$14.8 million in contracts.⁵ Additionally, DoD IG stated that, in 2018, the negotiated price for an AeroControlex contract,

¹ INSPECTOR GEN., U.S. DEP'T OF DEF., DODIG-2019-060 (2019), REVIEW OF PARTS PURCHASED FROM TRANSDIGM GROUP, INC. (2019), <https://media.defense.gov/2019/Feb/27/2002093922/-1/-1/1/DODIG-2019-060.PDF>.

² *Id.*

³ *Id.*

⁴ See INSPECTOR GEN., U.S. DEP'T OF DEF., D-2006-055, SPARE PARTS PROCUREMENT FROM TRANSDIGM, INC. (2006), <https://media.defense.gov/2018/Oct/10/2002049899/-1/-1/1/D-2006-055.PDF>.

⁵ *Id.*

which is a subsidiary of TransDigm, was found to be overpriced as well.⁶ In that case, the review team determined that the Department was scheduled to pay \$119.3 million over a 10-year span for parts that should have cost just \$28.3 million.⁷

According to TransDigm, the defense market accounted for roughly 34 percent of its sales in 2017.⁸ With such a large portion of their business coming from the Department, it is imperative to operate in good faith and exercise the utmost candor with the Department. However, this does not seem to be the case.

DoD IG determined that, for the contracts reviewed in DODIG-2019-060, profit percentages of 15 percent or below were deemed to be reasonable.⁹ DoD IG found that TransDigm earned excess profits, over the 15 percent threshold, on 46 of the 47 parts sold to the Department.¹⁰ In fact, TransDigm earned more than 1,000 percent profit on 17 of those parts, with the highest profit percentage being a staggering 4,436 percent.¹¹ These levels of profits are not consistent with the Federal Acquisition Regulation (FAR), Truth in Negotiations Act (TINA), and many other federal laws and regulations. The Department must do a better job at screening contracts with those entities it chooses to do business with.

In the report, DoD IG made several recommendations to the Defense Logistics Agency (DLA) and to the Army. Among these recommendations was a direction to contracting officers to request a voluntary refund from TransDigm for the excess profits identified in the report.¹² As of the date of this letter, the Department has not received a single dollar it requested as a refund. Additionally, recommendation 4.a sought to have the Defense Pricing and Contracting Principal (DPCP) Director examine the FAR, Defense Federal Acquisition Regulation (DFAR) Supplement, and the DFAR Regulation Supplement Procedures, Guidance, and Information, to determine needed changes in the acquisitions process.¹³ Recommendation 4.c recommended that the DPCP Director establish a framework in a memorandum by Department Components to the DPCP Director based on expanded requirements of the memorandum.¹⁴

The DoD IG recommendations are a good start, but ultimately insufficient. Additionally, the DoD IG has since stated that no *one* Department official is responsible for instances of price gouging. However, the Department *is* responsible for stewardship of taxpayer dollars. When waste, fraud, or abuse, is discovered and verified within the Department – as is the case here with multiple TransDigm contracts – the Department needs to identify its cause and take appropriate corrective action. The Department should also determine whether any individuals had knowledge these prices were inappropriate and overlooked or approved them anyway, and why.

⁶ INSPECTOR GEN., U.S. DEP'T OF DEF., DODIG-2019-060, REVIEW OF PARTS PURCHASED FROM TRANSDIGM GROUP, INC. (2019), <https://media.defense.gov/2019/Feb/27/2002093922/-1/-1/1/DODIG-2019-060.PDF>.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

To better understand how the Department contracts with entities engaging in overpricing, its process with respect to obtaining cost data from entities, and how Congress can assist the Department in halting price-gouging practices, please answer the following questions no later than June 13, 2019.

1. Does the Department have current contracts with TransDigm? If so, please provide a list of current contracts the Department has with TransDigm along with the contract amounts.
2. Generally, what is the Department's success rate in obtaining voluntary refunds once it is deemed that the Department was overcharged on a particular contract? How many voluntary refund requests, Department-wide, are currently pending?
3. What is the current status of the voluntary refund requests, identified in the report, that the Department requested TransDigm return to the Department? How many other outstanding voluntary refund requests are currently pending with TransDigm?
4. The report stated TransDigm took advantage of its sole-source position on a number of contracts, particularly describing AeroControlex, a TransDigm subsidiary, as monopolistic. What steps has the Department taken to locate or develop alternate sources within the defense industry?
5. The report stated that contractors continually struggle to obtain cost data from TransDigm when attempting to make contracting decisions.
 - a. Does TransDigm routinely reject the Department's request for cost data?
6. Does the Department believe that contracting officers possess sufficient authority to enforce requests for uncertified cost data from its contractors? If not, what prohibits contracting officers from enforcing these requests? Please identify the current process for which contracting officers must go through in order to request cost data from entities.
7. The Department has released a memorandum pursuant to DoD IG recommendation 4.c. Will the Department commit to informing me as to the findings of the quarterly reporting that DoD IG recommended?
8. Does the Department have recommendations as to how Congress can further provide the Department with the necessary authority to combat price-gouging? If so, please provide these recommendations in detail.

In a Memorandum from former Secretary of Defense James Mattis dated July 21, 2017, Secretary Mattis expressed that he expected "leaders at all levels of the Department to exercise

the utmost degree of stewardship" of taxpayer money.¹⁵ Further, Secretary Mattis stated that "[c]avalier or casually acquiescent decisions to spend taxpayer dollars in an ineffective and wasteful manner are not to recur."¹⁶ The Department must take appropriate steps to safeguard itself against entities that habitually engage in flagrant waste of the taxpayers' money and hold those directly responsible for such waste accountable.

Should you have questions, please contact Quinton Brady of my Committee staff at (202) 224-4515. Thank you for your attention to this important matter.

Sincerely,



Charles E. Grassley
Chairman
Senate Committee on Finance

PS: As a long-time supporter of strong defense and also a long-time watchdog of financial mismanagement and waste at DOD, I am deeply disturbed by the recent I & R Report which prompted this letter. It exposes egregious price gouging by overseas parts by one company, the Trans Digm Group. With a virtual monopoly over these parts, that company is able to "set" prices sky high and has been doing it for 20 years. Responsible officials, who knew about it but did nothing to stop it, should be held accountable. Mr. Secretary please resolve this matter before it undermines support for higher DOD budgets.

¹⁵ Memorandum from James Mattis, Sec'y, Dep't of Def., to Under Sec'ys of Def. (July 21, 2017), http://www.pogoarchives.org/m/ga/mattis_sigar_memo_20170721.pdf.

¹⁶ *Id.*