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December 5, 2019

Lieutenant General Todd T. Semonite  
Chief of Engineers and Commanding General  
U.S. Army Corps of Engineers  
441 G Street NW  
Washington, DC 20314-1000

Dear General Semonite:

I write regarding the December 2, 2019, announcement<sup>1</sup> that the U.S. Army Corps of Engineers (USACE) has awarded a \$400 million contract to the North Dakota-based company Fisher Sand and Gravel Co. (FSG) to build a new section of President Trump's border wall near the southern border of Arizona. The decision to award this contract to FSG—whose CEO is a Republican Party donor—raises questions about the fairness of the procurement process and corruption in the Trump Administration, given reports that President Trump has “personally and repeatedly” urged you to hire this company even though FSG's past proposals did not meet U.S. Customs and Border Protection or USACE requirements and “lacked regulatory approvals,” and FSG's previous work on a barrier project “came in late and over budget.”<sup>2</sup>

Taxpayer funds must be spent wisely, and the procurement process must not favor big campaign donors or personal favorites of the President. The appearance of favoritism and cronyism in the award of this contract is troubling, and I write to seek additional information on the process by which FSG was awarded this lucrative job.

FSG has a shoddy environmental and legal record. The company racked up a record number of air-quality violations in Maricopa County, Arizona, culminating in the third-highest settlement ever received by the Maricopa County Air Quality Department.<sup>3</sup> In 2009, the former co-owner of

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<sup>1</sup> U.S. Department of Defense, “Contracts for Dec. 2, 2019,” December 2, 2019, <https://www.defense.gov/Newsroom/Contracts/Contract/Article/2030017/>.

<sup>2</sup> Washington Post, “‘He always brings them up’: Trump tries to steer border wall deal to North Dakota firm,” Nick Miroff and Josh Dawsey, May 23, 2019, [https://www.washingtonpost.com/immigration/he-always-brings-them-up-trump-tries-to-steer-border-wall-deal-to-north-dakota-firm/2019/05/23/92d3858c-7b30-11e9-8bb7-0fc796cf2ec0\\_story.html](https://www.washingtonpost.com/immigration/he-always-brings-them-up-trump-tries-to-steer-border-wall-deal-to-north-dakota-firm/2019/05/23/92d3858c-7b30-11e9-8bb7-0fc796cf2ec0_story.html).

<sup>3</sup> CNN, “Company touted by Trump to build the wall has history of fines, violations,” Priscilla Alvarez, Clare Foran, and Ryan Browne, May 31, 2019, <https://www.cnn.com/2019/05/31/politics/fisher-sand-and-gravel-legal-history-border-wall/index.html>.

FSG—the brother of the current CEO—pleaded guilty to multiple counts of tax fraud, including aiding in the filing of false federal tax returns for FSG, and was sentenced to prison.<sup>4</sup>

USACE has rejected FSG's bids to build the barrier in the past, at least in part because the barrier "did not meet [USACE] requirements and lacked regulatory approvals."<sup>5</sup> Following this rejection, FSG engaged in a variety of tactics to win the favor of government officials. FSG has spent over \$100,000 lobbying Congress and the Department of Homeland Security.<sup>6</sup> In April, working with a private group, FSG demonstrated its method of barrier construction in Arizona for an audience that included USACE officials, as well as White House allies including several members of Congress and former Kansas State Secretary Kris Kobach.<sup>7</sup> Tommy Fisher, the CEO of FSG, has appeared on Fox News and Fox Business at least 10 times, where he "used those interviews to talk about the importance of the border wall and to pitch the president directly on his installation system, which he claimed would construct the barrier faster and for less money."<sup>8</sup> While boasting about his ability to build the wall on a Fox News morning show in April, Fisher even said, "hopefully the president will see this."<sup>9</sup> He has cited the Trump Organization renovation of an ice rink in Central Park and praised the President's "intuition."<sup>10</sup>

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<sup>4</sup> U.S. Department of Justice, "North Dakota Executive Sentenced to Prison for Tax Fraud," press release, December 14, 2009, <https://www.justice.gov/opa/pr/north-dakota-executive-sentenced-prison-tax-fraud>.

<sup>5</sup> Washington Post, "He always brings them up: Trump tries to steer border wall deal to North Dakota firm," Nick Miroff and Josh Dawsey, May 23, 2019, [https://www.washingtonpost.com/immigration/he-always-brings-them-up-trump-tries-to-steer-border-wall-deal-to-north-dakota-firm/2019/05/23/92d3858c-7b30-11e9-8bb7-0fc796cf2ec0\\_story.html](https://www.washingtonpost.com/immigration/he-always-brings-them-up-trump-tries-to-steer-border-wall-deal-to-north-dakota-firm/2019/05/23/92d3858c-7b30-11e9-8bb7-0fc796cf2ec0_story.html).

<sup>6</sup> ProPublica Represent, "Lobbying by Fisher Sand & Gravel Co.," accessed December 4, 2019, <https://projects.propublica.org/represent/lobbying/301016222>.

<sup>7</sup> Kobach is the public face for an organization that contracts privately with FSG to build segments of barrier on private land. The organization's efforts have raised concerns by the U.S. International Boundary and Water Commission, and on December 3, 2019, a Texas judge ordered it to stop construction in part. Minot Daily News, "North Dakota company demonstrates building border wall," Eloise Ogden, April 19, 2019, <https://www.minotdailynews.com/news/local-news/2019/04/nd-company-demonstrates-building-border-wall/>. Wichita Eagle, "As Kobach pursues U.S. Senate, border wall group he represents leaves anger in its wake," Jonathan Shorman, Steve Vockrodt, Jason Hancock, and Bryan Lowry, July 21, 2019, <https://www-1.kansas.com/news/politics-government/article232855972.html>; Washington Post, "Right-wing group must stop building private border wall in South Texas, judge says in temporary order," Teo Armus, December 4, 2019, <https://www.washingtonpost.com/nation/2019/12/04/brian-kolfage-we-build-wall-temporary-order-butterfly-center-texas/>.

<sup>8</sup> Media Matters, "Fox-Trump feedback loop nets company a \$400 million contract," Matt Gertz, December 3, 2019, <https://www.mediamatters.org/fox-news/fox-trump-feedback-loop-nets-company-400-million-contract>.

<sup>9</sup> Associated Press, "Wall builder who pitched to Trump on Fox wins \$400M contract," James Macpherson, Elliot Spagat, and Bernard Condon, December 3, 2019, <https://apnews.com/f1aa995b56d05339d11cacaf81c9e555>.

<sup>10</sup> Media Matters, "Fox-Trump feedback loop nets company a \$400 million contract," Matt Gertz, December 3, 2019, <https://www.mediamatters.org/fox-news/fox-trump-feedback-loop-nets-company-400-million-contract>; Media Matters, "How one company used a Fox-centric PR strategy to try to get Trump to give it a lucrative federal contract," Matt Gertz, May 23, 2019, <https://www.mediamatters.org/donald-trump/how-one-company-used-fox-centric-pr-strategy-try-get-trump-give-it-lucrative-federal>.

Many of these tactics were seemingly designed to appeal directly to the President—and they worked. Reports indicate that the President has repeatedly urged you—including in an Oval Office meeting—to award the contract to FSG.<sup>11</sup> Jared Kushner, the President’s son-in-law, also reportedly became “intimately interested in the cost of the wall and why other companies were being chosen over [FSG].”<sup>12</sup> Ultimately, according to reports, “[FSG] was added to a pool of competitors after the Army Corps came under pressure from the White House.”<sup>13</sup>

Federal procurement and contracting laws are in place to prevent corruption, ensuring that taxpayers fund are spent on contractors that can do the job right, and do it inexpensively and safely. They are specifically designed to weed out favoritism and political interference. The decision to award this \$400 million contract to a subpar bidder after the President’s personal intervention appears to represent a perversion of what should be a fair and honest process.

I have long been concerned about corruption in government. Last Congress, I introduced sweeping ethics legislation, the Anti-Corruption and Public Integrity Act,<sup>14</sup> which, among other reforms, would expand the definition of a lobbyist to include individuals paid to influence the government on behalf corporations like FSG and their front groups, increase transparency around lobbying activities such as those that FSG has engaged in, and ban direct political donations from lobbyists to candidates or members of Congress. It would effectively end the cozy relationship between corporate interests and members of Congress and the President. I intend to keep working to make that bill law. In order to better understand how the USACE procurement process may have been corrupted, I ask that you provide answers to the following questions no later than December 20, 2019.

1. Please provide a complete, detailed timeline of the award process that culminated in FSG receiving the \$400 million contract earlier this month.
2. According to the Defense Department’s contract announcement, “[f]ive bids were solicited with three bids received.”<sup>15</sup> Which companies bid on the project? When did USACE solicit bids from each of these companies?
3. Which companies were selected for final consideration in the bidding process? When did USACE add each of these companies to the pool of final competitors?

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<sup>11</sup> Washington Post, “‘He always brings them up’: Trump tries to steer border wall deal to North Dakota firm,” Nick Miroff and Josh Dawsey, May 23, 2019, [https://www.washingtonpost.com/immigration/he-always-brings-them-up-trump-tries-to-steer-border-wall-deal-to-north-dakota-firm/2019/05/23/92d3858c-7b30-11e9-8bb7-0fc796cf2ec0\\_story.html](https://www.washingtonpost.com/immigration/he-always-brings-them-up-trump-tries-to-steer-border-wall-deal-to-north-dakota-firm/2019/05/23/92d3858c-7b30-11e9-8bb7-0fc796cf2ec0_story.html).

<sup>12</sup> Id.


<sup>13</sup> Id.

<sup>14</sup> Anti-Corruption and Public Integrity Act, S.3357, <https://www.congress.gov/bill/115th-congress/senate-bill/3357>.

<sup>15</sup> U.S. Department of Defense, “Contracts for Dec. 2, 2019,” December 2, 2019, <https://www.defense.gov/Newsroom/Contracts/Contract/Article/2030017/>.

4. Was FSG "added to [the] pool of competitors after the Army Corps came under pressure from the White House"?<sup>16</sup>
5. What specific criteria were used to determine the winning bid? How did USACE score these criteria to determine that FSG should be awarded the contract? How did FSG rank in each of these criteria, and in the final compilation of criteria used to determine the award?
6. Please describe any and all contact, direct or indirect, between USACE officials and FSG. Please describe the timing and nature of all such communications, and the identity of the individuals involved.
7. Please describe any and all contact, direct or indirect, between White House officials or other officials with the Executive Office of the President and USACE officials related to this contract and to FSG. Please describe the timing and nature of all such communications, and the identity of the individuals involved.
8. Please describe any and all contact, direct or indirect, between USACE officials and any other Administration officials related to this contract and to FSG. Please describe the timing and nature of all such communications, and the identity of the individuals involved.

Sincerely,



Elizabeth Warren  
United States Senator

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<sup>16</sup> Washington Post, "‘He always brings them up’: Trump tries to steer border wall deal to North Dakota firm," Nick Miroff and Josh Dawsey, May 23, 2019, [https://www.washingtonpost.com/immigration/he-always-brings-them-up-trump-tries-to-steer-border-wall-deal-to-north-dakota-firm/2019/05/23/92d3858c-7b30-11e9-8bb7-0fc796cf2ec0\\_story.html](https://www.washingtonpost.com/immigration/he-always-brings-them-up-trump-tries-to-steer-border-wall-deal-to-north-dakota-firm/2019/05/23/92d3858c-7b30-11e9-8bb7-0fc796cf2ec0_story.html).