

# Congress of the United States

Washington, DC 20515

May 24, 2023

David L. Calhoun  
President and CEO  
The Boeing Company  
929 Long Bridge Dr  
Arlington, VA 22202

Dear Mr. Calhoun,

We write to seek an explanation for Boeing's continued refusal to provide cost or pricing data to the DoD.<sup>1</sup> The most recent Department of Defense (DoD or the Department) *Annual Report to Congress on Denials of Contracting Officer Uncertified Cost or Pricing Data Requests* found that Boeing accounted for 97 percent of all data denials in FY2021.<sup>2</sup> Boeing's refusal to provide basic transparency on cost and pricing information represents a breach of the company's duty to government, taxpayers, and our servicemembers, and raises questions about whether DoD should retain these contracts with Boeing.

Congress mandated this annual report<sup>3</sup> in 2020. Boeing stands out as a particularly bad actor: the company accounted for 10,659 (97%) of the 10,934 cost and pricing data denials for the U.S. Air Force.<sup>4</sup> The basis for denials asserted by Boeing was that the data "would not be beneficial," that the "data did not exist," or that the company was "not required to provide the information."<sup>5</sup> These rationales for Boeing's failure to provide basic information to DoD contracting officers are absurd and unacceptable.

This was not the first time Boeing has refused to provide cost or pricing data – and previous cases involved overcharging multiple government agencies. In 2021, Boeing charged the Japanese government 16 times more than what the U.S. Air Force paid for a part.<sup>6</sup> The Air Force manages contracting for Japan's tankers, and as part of that role, makes sure prices are fair and

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<sup>1</sup> U.S. Department of Defense, Office of the Under Secretary of Defense for Acquisition and Sustainment, "Annual Report to Congress on Denials of Contracting Officer Uncertified Cost or Pricing Data Requests, October 2020 – September 2021," January 2022 (On file with the Office of Senator Elizabeth Warren).

<sup>2</sup> *Id.*, p. 2.

<sup>3</sup> Section 803 was included in the National Defense Authorization Act (NDAA) for fiscal year 2020, which requires The Under Secretary of Defense for Acquisition and Sustainment to provide an annual report to Congress, identify contractors that have denied multiple requests from the Department for the submission of uncertified cost or pricing data over the prior three-year period but still received a government-contract award from the Head of Contracting Activity (HCA). It also prohibits contractors from determining that the price of a contract is fair and reasonable based solely on past prices paid by the government from the Government; National Defense Authorization Act for FY2020, S.1790, <https://www.congress.gov/bill/116th-congress/senate-bill/1790>.

<sup>4</sup> U.S. Department of Defense, Office of the Under Secretary of Defense for Acquisition and Sustainment, "Annual Report to Congress on Denials of Contracting Officer Uncertified Cost or Pricing Data Requests, October 2020 – September 2021," January 2022, p. 3 (On file with the Office of Senator Elizabeth Warren).

<sup>5</sup> *Id.*

reasonable. As a result, the Air Force requested pricing data for 140 sample parts, later reducing that to 29, and Boeing refused to provide data on 28 of them, citing the data being unavailable.<sup>7</sup> In 2011, the DoD IG reported that Boeing overcharged the U.S. Army by \$13 million for helicopter spare parts because Boeing submitted cost or pricing data that was “not current, complete, [or] accurate.”<sup>8</sup>

In addition to not providing cost and pricing data for thousands of items, Boeing Global Services (BSG-C) refused to identify the Original Equipment Manufacturer (OEM) for many of the parts that are manufactured by subcontractors.<sup>9</sup> The OEM data is significant because without it, it is difficult to determine if subcontractors are exploiting their market power. Once production of a weapon begins, Boeing selects a subcontractor as the OEM, and the subcontractor may sell “the spare parts as aftermarket and can earn higher profits selling the spare parts because competition has been reduced or eliminated.”<sup>10</sup> OEM data also enhances supply chain security, particularly in preventing counterfeit parts. Lockheed Martin, a major competitor of Boeing, states “the first defense against the procurement of any counterfeit part is to know your source, regardless of commodity. Approved sources for counterfeit mitigation are the Original Component Manufacturer (OCM), OEM or their authorized distributors.”<sup>11</sup> As you are well aware, in 2021 Italian prosecutors alleged one Boeing supplier “produced more than 4,000 non-compliant parts” over five years.<sup>12</sup> In 2010, BAE Systems, which manufactures products for Boeing, discovered that counterfeited parts were used and called for Boeing to replace them. Boeing only was aware of this failure because of BAE, not thorough reviews. Following this, Boeing dragged its feet for a year and a half in notifying the Navy about suspect parts.<sup>13</sup>

The Federal Acquisition Regulation (FAR) (Subsection 15.4) sets a floor for transparency,

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<sup>6</sup> Bloomberg, “Boeing Charged Japan 1,500% Markup on Part, Air Force Says,” Anthony Capaccio, June 7, 2021, <https://www.bloomberg.com/news/articles/2021-06-08/boeing-charged-japan-1-500-markup-on-plane-part-air-force-says?sref=IYQ5mP1s&leadSource=uverify%20wall>.

<sup>7</sup> *Id.*

<sup>8</sup> U.S. Department of Defense, Office of the Inspector General, “Excess Inventory and Contract Pricing Problems Jeopardize the Army Contract with Boeing to Support the Corpus Christi Army Depot,” May 3, 2011, p. i, <https://www.documentcloud.org/documents/204808-full-unredacted-dod-office-of-inspector-general>; Project on Government Oversight, “Leaked Audit: Boeing Overcharged Army Up to 177,000 Percent on Helicopter Spare Parts,” Nick Schwellenbach, June 28, 2011, <https://www.pogo.org/investigation/2011/06/leaked-audit-boeing-overcharged-army-up-to-177000-percent-on-helicopter-spare-parts>.

<sup>9</sup> U.S. Department of Defense, Office of the Under Secretary of Defense for Acquisition and Sustainment, “Annual Report to Congress on Denials of Contracting Officer Uncertified Cost or Pricing Data Requests, October 2020 – September 2021,” January 2022, p. 2 (On file with the Office of Senator Elizabeth Warren).

<sup>10</sup> U.S. Department of Defense, Office of the Under Secretary of Defense for Acquisition and Sustainment, “Audit of the Business Model for TransDigm Group Inc. and Its Impact on Department of Defense Spare Parts Pricing,” December 13, 2021, p. 11, <https://media.defense.gov/2021/Dec/27/2002914678/-1/-1/1/DODIG-2022-043%20508.PDF>.

<sup>11</sup> Lockheed Martin, Frequently Asked Questions, Counterfeits, “Is the process for preventing counterfeit parts the same for all types of parts including EEE, fasteners, etc.?” <https://www.lockheedmartin.com/en-us/suppliers/faqs/counterfeits.html>.

<sup>12</sup> Reuters, “Prosecutors say Italian firm produced 4,000 flawed parts for Boeing,” Francesca Landini and Tim Hopher, December 21, 2021, <https://www.reuters.com/business/aerospace-defense/prosecutors-say-italian-firm-produced-4000-flawed-parts-boeing-2021-12-21/>.

<sup>13</sup> Senate Committee on Armed Services, “The Committee’s Investigation into Counterfeit Electronic Parts in the Department of Defense Supply Chain,” November 8, 2011, pp. 5-6, <https://www.govinfo.gov/content/pkg/CHRG-112shrg72702/pdf/CHRG-112shrg72702.pdf>.

requiring the contract buyer (in this case, the DoD) to obtain certified cost or pricing data<sup>14</sup> to determine a fair and reasonable price if it is above the FAR threshold of \$2 million and not otherwise exempt.<sup>15</sup> But Boeing uses this threshold as a ceiling, often citing in its contracting language, “this clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4 and is not otherwise exempt.”<sup>16</sup>

While Boeing refuses to provide DoD the data it needs to determine if its prices are fair and reasonable, the company continues to shovel taxpayer dollars to its executives and shareholders. Boeing has paid \$1.2 billion in dividends in 2020,<sup>17</sup> and engaged in a stock-buyback program of \$18 billion in 2017.<sup>18</sup> Executive compensation for FY2022 was nearly \$58 million,<sup>19</sup> and you, as CEO, earned over 150 times as much as the median employee.<sup>20</sup>

Boeing’s refusal to provide pricing data to help DoD contracting officers ensure they are negotiating a fair deal is unacceptable. To obtain additional information on why you are refusing to provide this information, and the impact of your refusal, we ask that you provide the following information by June 12, 2023:

1. What is Boeing’s policy for providing cost or pricing data when requested by the federal government?
2. Has Boeing refused or delayed providing cost or pricing data for transactions in the last year?
  - a. How many times and for what reason?
3. How many long-term or multi-year contracts does Boeing currently have with the federal government?
4. How many long-term or multi-year contracts does Boeing currently have with the Department of Defense?
5. How many Boeing transactions in the last year fall below the FAR threshold? How many were above that threshold?
6. What training does Boeing and its affiliates’ staff receive to respond to DoD cost and pricing data requests?
  - a. Is this documented? If so, please provide
  - b. Who administers this training?
  - c. How often is this training conducted?
  - d. Is this training required?
    - i. If not, why?

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<sup>14</sup> 10 U.S.C. Chapter 271; 41 U.S.C. Chapter 35.

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

<sup>16</sup> Boeing Defense, Space & Security, “Customer Contract Requirements,” February 18, 2021, p. 2, [https://www.boeingsuppliers.com/idscommon/ccr/f/FA8614-13-D-2002-FA8614-21-F-0000\\_CCR\\_2021-02-18.pdf](https://www.boeingsuppliers.com/idscommon/ccr/f/FA8614-13-D-2002-FA8614-21-F-0000_CCR_2021-02-18.pdf).

<sup>17</sup> U.S. Securities and Exchange Commission, The Boeing Company, Form 10-K, FY2022, p. 42, <https://www.sec.gov/ix?doc=/Archives/edgar/data/12927/000001292723000007/ba-20221231.htm>.

<sup>18</sup> *Id.*, FY2017, p. 16, <https://www.sec.gov/Archives/edgar/data/12927/000001292718000007/a201712dec3110k.htm>.

<sup>19</sup> U.S. Securities and Exchange Commission, The Boeing Company, Schedule 14A, FY2022, p. 56, <https://www.sec.gov/ix?doc=/Archives/edgar/data/0000012927/000119312523059893/d424500ddef14a.htm>.

<sup>20</sup> *Id.*, p. 66.

- e. Are there disciplinary actions if staff refuse to provide DoD requested cost or pricing data? Are there rewards for refusing or delaying the provision of this data?
  - i. If so, please describe
  - ii. If not, why?
- 7. What products has Boeing provided the DoD in the following areas over the past two decades:
  - a. Ukraine
  - b. Afghanistan
  - c. Iraq
- 8. In the last five years have you received DoD requests for cost or pricing data from the following:
  - a. US Army
  - b. US Air Force
  - c. US Navy
  - d. US Marine Corps
  - e. US Space Force
  - f. Defense Logistics Agency
- 9. If the answer is yes for question 8, please provide the number of total requests for certified cost or pricing data, uncertified cost or pricing data, the number of data denials, the number of instances when data was provided, and the reasoning for denials.
- 10. What is your profit margin on U.S. defense contracts?
- 11. What is Boeing's policy for sharing data between subsidiaries?
- 12. What is Boeing's policy for identifying OEMs?
- 13. What has Boeing done to detect counterfeit parts?
  - a. How many counterfeit parts has Boeing detected in the past five years?
  - b. What actions did Boeing take in response?
- 14. What steps has Boeing taken to minimize the existence of counterfeit parts?
- 15. What is Boeing's policy for sharing the detection of counterfeit parts with DoD and other government agencies?

Sincerely,



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Elizabeth Warren  
United States Senator



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John Garamendi  
Member of Congress  
Ranking Member,  
Subcommittee on Readiness