

Congress of the United States

Washington, DC 20515

May 24, 2023

Kevin Stein
President and CEO
The TransDigm Group
1301 E 9th St. Ste 3000
Cleveland, OH 44114

Dear Mr. Stein,

We write to seek an explanation for TransDigm’s continued refusal to provide cost or pricing data to the DoD.¹ 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 TransDigm accounted for all Defense Logistics Agency data denials (275) in FY2021.² This report shows that TransDigm Group continues to refuse to provide the data necessary for the government to prevent the overcharges and protect taxpayers and DoD.

Congress mandated this annual report³ as a direct response to TransDigm’s appalling behavior after a 2019 DoD Office of Inspector General (IG) report revealed that “TransDigm earned \$16.1 million in excess profit for 46 parts it sold to the DLA [Defense Logistics Agency] and the Army between January 2015 and January 2017.”⁴ The IG’s review of this matter found that 16 times contracting officers requested cost data to justify TransDigm’s prices – and 15 times the company denied the requests forcing DoD to choose between “buying the parts without receiving cost data from TransDigm or not buying the parts needed to meet mission requirements.”⁵ The IG also found that TransDigm made excess profits in all 15 cases.⁶ This was not the first time

¹ 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).

² *Id.*, p. 2.

³ 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 FY 2020, S.1790, <https://www.congress.gov/bill/116th-congress/senate-bill/1790>.

⁴ U.S. Department of Defense, Office of the Inspector General, “Review of Parts Purchased from TransDigm Group, Inc.,” February 25, 2019, p. iii, <https://media.defense.gov/2019/Feb/27/2002093922/-1/-1/1/DODIG-2019-060.PDF>.

⁵ *Id.*

⁶ U.S. House of Representatives, Committee on Oversight and Reform, Memorandum “Supplemental Memorandum on Actions by TransDigm,” May 15, 2019, p. 6, https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/2019-05-15.COR%20Supplemental%20Memo-5-15-19%20Hearing%20DOD%20IG%20Rept.%20on%20Excess%20Profits%20by%20TransDigm%20Group%20Inc_.pdf.

TransDigm had been revealed as ripping off taxpayers.⁷ In 2006, the DLA overpaid TransDigm by \$5.3 million, in part because of the company’s refusal to provide the cost or pricing data.”⁸

In many cases, TransDigm is the sole-source for a part, and refuses to provide cost or pricing information to the DoD.⁹ The Truth In Negotiations Act (TINA) requires contractors to provide certified cost or pricing data to determine whether prices are fair and reasonable on all contracts of \$2 million or more.¹⁰ This is to provide “a degree of level footing for contracting officers negotiating with sole source contractors” by requiring submission of cost and pricing data.¹¹ TransDigm appears to have repeatedly exploited this loophole by keeping its transactions below the TINA threshold to avoid having to provide this data. For example, the DoD IG’s 2019 report found TransDigm denied providing uncertified cost data for all contracts under this threshold and only provided certified cost data for one contract above the TINA threshold.¹² A more recent IG report showed that between 2017 and 2019, 95 percent¹³ of TransDigm contracts were below the TINA threshold.

The new DoD report indicates that TransDigm is now relying on a new set of excuses for refusing to provide information, and has “asserted commerciality” 261 times to avoid providing pricing data.¹⁴ As an independent review team for the Department noted, “contracting officers have limited tools to evaluate price reasonableness in a sole-source commercial-type acquisition, which hinders the contracting officer’s ability to negotiate fair and reasonable prices.”¹⁵

⁷ The Huffington Post, “Meet The Martin Shkreli Of Defense Contracting,” Zachary D. Carter, March 23, 2017, https://www.huffpost.com/entry/defense-contractor-monopoly-transdigm-mick-mulvaney_n_58d2f8dae4b0b22b0d19ad2a.

⁸ U.S. Department of Defense, Office of the Inspector General, “Acquisition: Spare Parts Procurements from TransDigm, Inc.,” February 23, 2006, p. i, <https://media.defense.gov/2006/Feb/23/2001712361/-1/-1/1/06-055.pdf>.

⁹ 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. 19, <https://media.defense.gov/2021/Dec/13/2002908344/-1/-1/1/DODIG-2022-043.PDF>.

¹⁰ U.S. Department of Defense, Office of the Under Secretary of Defense for Acquisition and Sustainment, “PGI 215.4 – Contract Pricing, PGI 215.402 Pricing Policy,” https://www.acq.osd.mil/dpap/dars/pgi/pgi_htm/current/PGI215_4.htm#:~:text=The%20Truthful%20Cost%20and%20Pricing,or%20pricing%20data%20requirements%20applies; 10 U.S.C. § 2306a, 41 U.S.C. § 254b; Government Accountability Office, “Federal Contracting: Implementation of Changes to Cost or Pricing Data Requirements,” April 14, 2022, p. 2, <https://www.gao.gov/assets/gao-22-105307.pdf>.

¹¹ Statement by John M. Tenaglia, Principal Director, Defense Pricing and Contracting before the U.S. House of Representatives, Committee on Oversight and Reform, “Pricing of Contracts for Military Spare Parts,” January 19, 2022, p. 3, <https://docs.house.gov/meetings/GO/GO00/20220119/114348/HHRG-117-GO00-Wstate-TenagliaJ-20220119.pdf>.

¹² U.S. Department of Defense, Office of the Inspector General, “Review of Parts Purchased from TransDigm Group, Inc.,” February 25, 2019, p. 8, <https://media.defense.gov/2019/Feb/27/2002093922/-1/-1/1/DODIG-2019-060.PDF>.

¹³ Statement by Theresa S. Hull, Deputy Inspector General before the House Committee on Oversight and Reform, “Price Gouging in Military Contracts: New Inspector General Report Exposes Excess Profit Obtained by TransDigm Group,” January 19, 2022, p. 5, <https://docs.house.gov/meetings/GO/GO00/20220119/114348/HHRG-117-GO00-Wstate-HullT-20220119.pdf>.

¹⁴ 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).

¹⁵ U.S. Department of Defense, Office of the Inspector General, “Review of Parts Purchased from TransDigm Group, Inc.,” February 25, 2019, p. 27, <https://media.defense.gov/2019/Feb/27/2002093922/-1/-1/1/DODIG-2019-060.PDF>.

When TransDigm refuses to act in good faith, there are two options for the DoD: buy from TransDigm at their exorbitant prices, or walk away without the parts they need, putting mission readiness at risk. This lack of market competition leaves our military and national security vulnerable. In a statement before the House Committee on Oversight and Reform, the DoD's Principal Director for Defense Pricing and Contracting, John Tenaglia, stated "the price we pay matters because the more we pay, the less combat capability we can acquire for a ready force."¹⁶

TransDigm is a large company with a private-equity-style business model, buying up companies that produce exclusive equipment and specialty parts, and hiking up prices in order to extract profit.¹⁷ In FY 2022, TransDigm reported 87 acquisitions since its formation in 1993,¹⁸ and in FY 2020, the company estimated that 80% of its profits came from products they exclusively own.¹⁹

While TransDigm refuses to provide DoD the data it needs to determine if its prices are fair and reasonable, the company continues to shovel taxpayer dollars out the door to its executives and shareholders via stock-buyback programs and generous executive compensation. In November 2017, TransDigm authorized a \$650 million stock buy-back program²⁰ and in FY2020, you earned a salary increase of nearly 70 percent.²¹ The company authorized another stock buy-back program in January 2022 for \$2.2 billion.²² The company paid its executives nearly \$46 million in 2022,²³ and you, as CEO earned over 350 times as much as the median employee.²⁴

In December 2021, the DoD IG recommended that, to provide redress for past overcharges, DLA should "seek a voluntary refund from TransDigm of at least \$20.8 million in excess profit."²⁵ Company spokesperson Jaimie Stemen said the contractor was "reviewing" the audit report²⁶,

¹⁶ Statement by John M. Tenaglia before the House Committee on Oversight and Reform, "Pricing of Contractors for Military Spare Parts," January 19, 2022, p. 5, <https://docs.house.gov/meetings/GO/GO00/20220119/114348/HHRG-117-GO00-Wstate-TenagliaJ-20220119.pdf>.

¹⁷ The Huffington Post, "Meet The Martin Shkreli Of Defense Contracting," Zachary D. Carter, March 23, 2017, https://www.huffpost.com/entry/defense-contractor-monopoly-transdigm-mick-mulvaney_n_58d2f8dae4b0b22b0d19ad2a; The American Prospect, "The Eternal Recurrence of Defense Contractor Price-Gouging," David Dayen, December 17, 2021, <https://prospect.org/power/eternal-recurrence-of-defense-contractor-price-gouging/>.

¹⁸ U.S. Securities and Exchange Commission, TransDigm Group Inc., Form 10-K, FY2022, p. 24, <https://www.sec.gov/ix?doc=/Archives/edgar/data/1260221/000126022122000065/tdg-20220930.htm>.

¹⁹ *Id.*, FY2020, p. 1., <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001260221/000126022120000099/tdg-20200930.htm>.

²⁰ *Id.*, FY2019, p. 19, <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001260221/000126022119000043/tdg2019-09x3010xk.htm#s9F85F180A0A15B358D1984552026E5D3>.

²¹ U.S. Securities and Exchange Commission, TransDigm Group Inc., Schedule 14A, FY2020, p. 40, https://www.sec.gov/Archives/edgar/data/1260221/000119312521030878/d85164ddef14a.htm#toc85164_15.

²² U.S. Securities and Exchange Commission, TransDigm Group Inc., Form 10-K, FY2022, F-31, F-32, p. 22, <https://www.sec.gov/ix?doc=/Archives/edgar/data/1260221/000126022122000065/tdg-20220930.htm>.

²³ U.S. Securities and Exchange Commission, TransDigm Group Inc., Schedule 14A, FY2022, p. 35, https://www.sec.gov/Archives/edgar/data/1260221/000119312523016872/d401846ddef14a.htm#toc401846_22.

²⁴ *Id.*, p. 41.

²⁵ 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. iii, <https://media.defense.gov/2021/Dec/27/2002914678/-1/-1/1/DODIG-2022-043%20508.PDF>.

and since then there has been no public update on how TransDigm has addressed this matter or who has been held accountable.

TransDigm's ongoing refusal to provide DoD with pricing data is unacceptable given the company's record of ripping off the government and taxpayer. 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. Will TransDigm provide DoD a \$20.8 million refund? What is the status of funds the DoD IG recommended you return to DoD?
2. What is TransDigm's policy for providing cost or pricing data when requested by the federal government?
3. Has TransDigm refused or delayed providing cost or pricing data for transactions in the last year?
 - a. How many times and for what reason?
4. How many long-term or multi-year contracts does TransDigm currently have with the federal government?
5. How many long-term or multi-year contracts does TransDigm currently have with the Department of Defense?
6. How many TransDigm transactions in the last year fall below the TINA threshold? How many were above that threshold?
7. What training does TransDigm 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?
 - 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?
8. What products has TransDigm provided the DoD in the following areas over the past two decades:
 - a. Ukraine
 - b. Afghanistan
 - c. Iraq
9. 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

²⁶ The American Prospect, "The Eternal Recurrence of Defense Contractor Price-Gouging," David Dayen, December 17, 2021, <https://prospect.org/power/eternal-recurrence-of-defense-contractor-price-gouging/>.

f. Defense Logistics Agency

10. If the answer is yes for question 9, 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.
11. What is your profit margin on U.S. defense contracts?
12. What steps have you taken since the 2019 House Oversight Hearing “DOD Inspector General Report on Excess Profits by TransDigm Group, Inc.” to offer be more responsive to DoD requests for cost or pricing data?²⁷

Sincerely,



Elizabeth Warren
United States Senator



John Garamendi
Member of Congress
Ranking Member,
Subcommittee on Readiness

²⁷ U.S. House of Representatives, House Oversight and Reform Committee, “DOD Inspector General Report on Excess Profits by TransDigm Group, Inc.” May 15, 2019, <https://www.congress.gov/event/116th-congress/house-event/109477>.