

Congress of the United States

Washington, DC 20515

November 29, 2023

The Honorable Lloyd Austin
Secretary of Defense
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Secretary Austin,

We write to request additional information about how the Department of Defense (DoD or “the Department”) is preventing price gouging when contractors refuse to provide requested cost or pricing data. Multiple audit reports over the past several years have highlighted the problem of contractors overcharging DoD on sole-source contracts, where cost or pricing data was not used to determine a fair and reasonable price.¹ Most recently, the IG has identified Boeing and TransDigm as having particularly egregious reporting records, and earlier this year we wrote to these companies and to DOD about this problem.² We received responses from Boeing, TransDigm, and DoD that raised further questions about the adequacy of current laws and enforcement practices to prevent price gouging, and the public deserves answers.

The *Truth in Negotiation Act (TINA)*, later renamed the *Truthful Cost or Pricing Act*, requires the government to obtain data to determine whether prices are fair and reasonable,³ unless an exception exists.⁴ This data is necessary for the Department to ensure government contractors are not overcharging taxpayers. DoD has reported, however, that there are “chronic issues” with contractors refusing to provide that data.⁵ In fact, DoD Inspector General (DoD IG) reports have

¹ U.S. Department of Defense, Office of the Inspector General, “Audit of the Business Model for TransDigm Group Inc. and Its Impact on Department of Defense Spare Parts Pricing,” December 13, 2021, p. 18, <https://media.defense.gov/2021/Dec/27/2002914678/-1/-1/1/DODIG-2022-043%20508.PDF>.

² Office of U.S. Senator Elizabeth Warren, “Warren, Garamendi Call Out Boeing and Transdigm for Refusing to Provide Cost or Pricing Data to Defense Department, Potentially Price Gouging Taxpayers,” May 25, 2023, <https://www.warren.senate.gov/oversight/letters/warren-garamendi-call-out-boeing-and-transdigm-for-refusing-to-provide-cost-or-pricing-data-to-defense-department-potentially-price-gouging-taxpayers>; 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>.

³ 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](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; ProPricer, “Know TINA’s Threshold: Embrace the Truth in Negotiations Act,” November 22, 2022, https://www.propricer.com/blog/know-tinas-threshold-embrace-the-truth-in-negotiations-act); ProPricer, “Know TINA’s Threshold: Embrace the Truth in Negotiations Act,” November 22, 2022, <https://www.propricer.com/blog/know-tinas-threshold-embrace-the-truth-in-negotiations-act>.

⁴ 41 USC Ch. 35, 3503; U.S. Department of Defense, Office of the Inspector General, “Review of Parts Purchased from TransDigm Group, Inc.,” February 25, 2019, p. i, <https://media.defense.gov/2019/Feb/27/2002093922/-1/-1/1/DODIG-2019-060.PDF>.

revealed that some of the Department’s top contractors, including Lockheed Martin,⁶ Pratt and Whitney,⁷ and Raytheon⁸, have refused or claimed to be unable to provide it.

Contractors who consistently refuse to turn over cost and pricing data continue to rake in DoD contracts. For example, three previous inspector general reports⁹ and a subsequent DoD report¹⁰ have found TransDigm and its subsidiaries have repeatedly refused to provide requested cost or pricing data. The latest DoD’s *Annual Report to Congress on Denials of Contracting Officer Uncertified Cost or Pricing Data Requests*, provided to Congress earlier this year, contained deeply troubling findings that TransDigm and its subsidiaries continue to refuse to provide pricing data, failing to respond to 401 requests from the Defense Logistics Agency (DLA).¹¹ We share the Department’s concern that “the problem in obtaining data from contractors to support fair and reasonable prices may be more prevalent than what has been collected to date, particularly with respect to sole source commercial products.”¹² In order to better capture this information the Senate version of the National Defense Authorization Act would expand current DoD reporting requirements to include companies that delayed providing cost or pricing data.¹³

TransDigm

In response to our letter, which sought answers from TransDigm on its failure to report pricing data, the company “question[ed] an assertion that TransDigm companies refused to provide cost or pricing data supporting the reasonableness of their prices,”¹⁴ and claimed they are “not

⁵ U.S. Government Accountability Office, “Spare Part Contracts: Collecting Additional Information Could Help DOD Address Delays in Obtaining Cost or Pricing Data,” May 26, 2021, p. 7, <https://www.gao.gov/assets/720/714558.pdf>.

⁶ U.S. Department of Defense, Office of the Inspector General, “The Air Force Did Not Adequately Determine or Document Fair and Reasonable Prices for Lot 7 Sole-Source Initial Spare Parts for the C-5 Aircraft,” February 7, 2017, pp. 5-13, <https://media.defense.gov/2017/Feb/07/2001714317/-1/-1/1/DODIG-2017-053.pdf>.

⁷ U.S. Department of Defense, Office of the Inspector General, “U.S. Air Force Spent Billions on F117 Engine Sustainment Without Knowing What a Fair Price Was,” March 11, 2016, p. 1, <https://media.defense.gov/2016/Mar/11/2001714219/-1/-1/1/DODIG-2016-059.pdf>.

⁸ U.S. Department of Defense, Office of the Inspector General, “Naval Supply Systems Command Needs to Improve Cost Effectiveness of Purchases for the Phalanx Close-In Weapon System,” December 19, 2014, p. 11, <https://media.defense.gov/2018/Jul/23/2001945902/-1/-1/1/DODIG-2015-053.PDF>.

⁹ U.S. Department of Defense, Office of the Inspector General, “Spare Parts Procurements From TransDigm, Inc.,” February 23, 2006, p. 10, <https://media.defense.gov/2006/Feb/23/2001712361/-1/-1/1/06-055.pdf>; U.S. Department of Defense, Office of the Inspector General, “Review of Parts Purchased from TransDigm Group, Inc.,” February 25, 2019, pp. ii – iii, <https://media.defense.gov/2019/Feb/27/2002093922/-1/-1/1/DODIG-2019-060.PDF>; U.S. Department of Defense, Office of the Inspector General, “Audit of the Business Model for TransDigm Group Inc. and Its Impact on Department of Defense Spare Parts Pricing,” December 13, 2021, p. ii, <https://media.defense.gov/2021/Dec/27/2002914678/-1/-1/1/DODIG-2022-043%20508.PDF>.

¹⁰ 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 2021 – September 2022,” January 2023, p. 2-4 [On file with the Office of U.S. Senator Elizabeth Warren].

¹¹ *Id.*, p. 2.

¹² *Id.*

¹³ National Defense Authorization Act for Fiscal Year 2024, S. 2226, <https://www.congress.gov/118/bills/s2226/BILLS-118s2226rs.pdf>.

¹⁴ Letter from TransDigm CEO Kevin Stein to U.S. Senator Elizabeth Warren, June 12, 2023, p. 2 [On file with the Office of U.S. Senator Elizabeth Warren].

currently aware of any such instances”¹⁵ where TransDigm companies refused to provide cost or pricing data. However the latest DoD *Annual Report to Congress on Denials of Contracting Officer Uncertified Cost or Pricing Data Requests* revealed that “all data denials reported by DLA involve items where the Original Equipment Manufacturer’s (OEM) parent company is TransDigm” with 401 total items.¹⁶ Additionally, DoD shared with us that the “Department is confident that the process is being followed and it shouldn’t be a surprise to any company [TransDigm] that a [contracting officer] requested specific data and it did not provide that data. In fact, in some cases the data is asked for multiple times during the elevation process to the head of the contracting activity.”¹⁷

The explanation for the discrepancy between TransDigm’s claims and the DoD IG findings is that TransDigm appears to be taking advantage of loopholes in contracting law related to “commerciality” and TINA reporting thresholds.¹⁸ TransDigm informed us that “products manufactured for commercial aircraft have near identical military counterparts”¹⁹ which allows for a loophole to deny producing cost or pricing data by claiming “commerciality.”²⁰ In the latest report to Congress, TransDigm claimed “commerciality” in about 90 percent of cases.²¹

In addition to claiming commerciality, TransDigm also refused to provide information about how many transactions in the last year fell below and above the TINA reporting requirement threshold. And multiple DoD IG reports revealed that the overwhelming majority of TransDigm transactions fell below the threshold. For example, the IG found that between 2017 and 2019, 95 percent²² of TransDigm contracts were below the TINA threshold. The IG also found that TransDigm provided the cost data for only *one* contract above the threshold that had no exceptions.²³ The refusal to provide this information raises fresh concerns about the company repeatedly exploiting this loophole, claiming exceptions or keeping transactions below the

¹⁵ *Id.*

¹⁶ 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 2021 – September 2022,” January 2023, p. 4 [On file with the Office of U.S. Senator Elizabeth Warren].

¹⁷ Email from U.S. Department of Defense to the Office of U.S. Senator Elizabeth Warren, June 29, 2023 [On file with the Office of U.S. Senator Elizabeth Warren].

¹⁸ Politico, “In House bill, arms makers wrote their own rules,” May 21, 2015, Austin Wright and Leigh Munsil, <https://www.politico.com/story/2015/05/in-house-bill-arms-dealers-wrote-their-own-rules-117842>.

¹⁹ Letter from TransDigm CEO Kevin Stein to U.S. Senator Elizabeth Warren, June 12, 2023, p. 2 [On file with the Office of U.S. Senator Elizabeth Warren].

²⁰ Project on Government Oversight, “Close Accountability Loopholes for Military Contractors,” Julia Gledhill and Scott Amey, April 28, 2022, <https://www.pogo.org/resource/2022/04/close-accountability-loopholes-for-military-contractors>.

²¹ 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. 4 [On file with the Office of U.S. Senator Elizabeth Warren].

²² 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>.

²³ U.S. Department of Defense, Office of the Inspector General, “Review of Parts Purchased from TransDigm Group, Inc.,” February 25, 2019, p. ii, <https://media.defense.gov/2019/Feb/27/2002093922/-1/-1/1/DODIG-2019-060.PDF>.

threshold. We are concerned that current TINA thresholds and other loopholes in the law are allowing contractors to price gouge DoD.

Boeing

Boeing also appears to be taking advantage of loopholes related to subsidiaries to avoid turning over cost or pricing data. In response to our letter, Boeing stated that “[d]ue to the sensitive nature of pricing and other financial information, Boeing’s policies limit employees from sharing financial data between business units.”²⁴ These actions by Boeing appear to be depriving DoD of cost or pricing data it needs to determine if prices are fair and reasonable by allowing Boeing to segregate pricing data between subsidiaries or business units within the parent company. Additionally, Boeing shared that the business unit Boeing Global Services did in fact share OEM data with the U.S. Air Force,²⁵ and that Boeing Global Services and Boeing Defense, Space & Security did supply OEM information and delivered this prior to the time period covered by the DoD report.²⁶ In contrast, Boeing shared with us that the company “has not refused any request to provide cost or pricing data required by law [and] ... does not intentionally delay providing cost or pricing data.”²⁷

Data provided by Boeing also appears to indicate that the company, like TransDigm, is exploiting the TINA loophole that allows for companies to refuse cost reporting on all contracts of less than \$2 million.²⁸ Boeing currently has over 1,600 active contracts with the U.S. government that are spanning more than three years,²⁹ with almost 95% of those with the DoD.³⁰ About 93% of all contracts awarded to Boeing in 2022 and through May 2023 were below the TINA threshold,³¹ and about 96% of all proposals submitted by Boeing during the same time period were below the TINA threshold.³²

DoD

In response to our letter, Under Secretary of Defense for Acquisition and Sustainment Dr. William A. LaPlante shared that the Head of the Contracting Activity (HCA)³³ must make the decision to award a contract, including in cases where a contractor refuses to provide cost or

²⁴ Letter from Boeing Executive Vice President Ziad Ojakli to U.S. Senator Elizabeth Warren, June 15, 2023, question 11 [On file with the Office of U.S. Senator Elizabeth Warren].

²⁵ *Id.*

²⁶ *Id.*, question 12.

²⁷ *Id.*, question 2.

²⁸ 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; 10 U.S.C. § 2306a; 41 U.S.C. § 254b; U.S. 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>.

²⁹ Letter from Boeing Executive Vice President Ziad Ojakli to U.S. Senator Elizabeth Warren, June 15, 2023, question 3 [On file with the Office of U.S. Senator Elizabeth Warren].

³⁰ *Id.*, question 4.

³¹ *Id.*, question 5.

³² *Id.*

pricing data. In these cases, the HCA may determine that “it is in the best interest of the Government” to make the award based on: 1) effort made to obtain the data 2) availability of other sources of supply of the item or service 3) the urgency or criticality of the Government’s need for the item or service 4) reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract based on information available to the contracting officer 5) rationale of justification made by the offeror for not providing the requested data 6) risk to the Government if the award is not made.³⁴

DoD also shared that it would not support an increase to the TINA threshold “due to concerns it would have a significant, negative impact on contracting officers’ ability to determine price reasonableness and negotiate reasonable prices.”³⁵ In the National Defense Authorization Act for Fiscal Year 2019, Congress required the Secretary of Defense to establish a pilot program to “reform and accelerate the contracting and pricing processes.”³⁶ This pilot program – “TINA Lite”³⁷ – determines price reasonableness based on actual cost or pricing data for prior DoD purchases of the same or similar products.³⁸ DoD has also contracted with George Mason University (GMU) School of Business to study alternatives to certified cost or pricing data.³⁹ GMU found that “information asymmetry is an obvious problem in these single-sourcing situations” and that “DoD’s requirements for detailed cost data are not so unusual” and are in fact “crucial” given the DoD’s duty to protect the interest of taxpayers.⁴⁰

DoD also shared that the Department does not track contractor delays in providing certified cost or pricing data, or data other than certified cost or pricing data.⁴¹ DoD also shared that there may be cases when elevation of the data denial is not necessary, including if the contractor advises that the requested data does not exist, or when a contractor provides some but not all of the data requested.⁴² When price reasonableness is unable to be established by a contracting officer with available data, the acquisition may be cancelled. However, if the item or service is required in support of a mission, available data also doesn’t support price reasonableness, and if there are no current alternatives to acquiring it, the contract must be elevated to the HCA to determine if it is in the governments best interest to make the award even without data to support price

³³ Letter from U.S. Department of Defense Under Secretary of Defense for Acquisition and Sustainment William LaPlante to Senator Elizabeth Warren, June 9, 2023, question 3 [On file with the Office of U.S. Senator Elizabeth Warren].

³⁴ *Id.*

³⁵ *Id.*, question 5.

³⁶ Public Law 115-232, Section 890.

³⁷ Section 890, NDAA FY 2019, (Public Law 115-232); U.S. Department of Defense, “Price, Cost and Finance – Pricing Topics,” <https://www.acq.osd.mil/asda/dpc/pcf/pricing-topics.html>.

³⁸ U.S. Department of Defense, “Sole Source Pricing Lessons Learned; A Preview,” Janice Muskopf, April 14, 2021, p. 5, https://www.acq.osd.mil/asda/dpc/pcf/docs/striking-balance/2021-04-14_Lessons_Learned-DAU_PCF_Webinar.pdf.

³⁹ Section 890, NDAA FY 2019, (Public Law 115-232); U.S. Department of Defense, “Price, Cost and Finance – Pricing Topics,” <https://www.acq.osd.mil/asda/dpc/pcf/pricing-topics.html>; U.S. Department of Defense, “Contract Finance Study Report,” April 2023, pp. 93-94, <https://www.acq.osd.mil/asda/dpc/pcf/docs/finance-study/FINAL%20-%20Defense%20Contract%20Finance%20Study%20Report%204.6.23.pdf>.

⁴⁰ Letter from U.S. Department of Defense Under Secretary of Defense for Acquisition and Sustainment William LaPlante to U.S. Senator Elizabeth Warren, June 9, 2023, question 5 [On file with the Office of U.S. Senator Elizabeth Warren].

⁴¹ *Id.*, question 9.

⁴² *Id.*, question 11.

reasonableness.⁴³ It remains unclear if any acquisitions have been cancelled, or if DoD is otherwise using its full authority to ensure the government isn't being ripped off.

Conclusion

We have and will continue to take strong action to protect taxpayers and end contractors' rip-offs of DoD. Senator Warren called on the Department to investigate TransDigm for its abuses as early as 2017.⁴⁴ In May 2023, Representative John Garamendi and I sent letters to DoD, Boeing, and TransDigm on cost or pricing data. In June 2023, Representative John Garamendi, Senator Mike Braun, and I reintroduced the *Stop Price Gouging the Pentagon Act*, to enhance the DoD's ability to access cost and pricing data.⁴⁵ This legislation aims to strengthen acquisition laws and enhance the Department's ability to access this pricing data to prevent rip-offs. Additionally, Senator Warren has introduced the *Department of Defense Ethics and Anti-Corruption Act*, which would prevent abuse by increasing transparency and shutting the revolving door between DoD and contractors that abuse the rules.⁴⁶

The latest report of contractor's refusal to provide pricing data, along with the responses from Boeing, TransDigm, and DoD, highlight the need for DoD and Congressional action. As stewards of taxpayers' money, we look forward to your feedback and cooperation on how we can prevent unacceptable exploitation of the current contracting system.

Consequently, we ask that you provide the following information by December 13, 2023:

In relation to TransDigm:

1. Does DoD "[favor] small-quantity, short-term orders"⁴⁷ that fall below TINA thresholds as TransDigm claims?
 - a. If so, why?
 - b. How, precisely, is this favoritism reflected in contracting decisions?

In relation to Boeing:

1. How does DoD define a "request" or a "denial" of cost or pricing data?
2. DoD's report notes that Boeing refused to provide cost or pricing data to the Air Force, but the company denies that this is the case.⁴⁸ Are you aware of any potential explanation for the discrepancy?

⁴³ *Id.*

⁴⁴ Letter from U.S. Senator Elizabeth Warren to U.S. Department of Defense Acting Inspector General Glenn Fine, May 19, 2017, <https://www.warren.senate.gov/imo/media/doc/2017-05-17%20Sen%20Warren%20letter%20to%20DODIG.pdf>.

⁴⁵ Office of U.S. Senator Elizabeth Warren, "Senator Warren and Representative Garamendi Reintroduce the Bicameral Stop Price Gouging the Military Act," press release, June 20, 2023, <https://www.warren.senate.gov/newsroom/press-releases/senators-warren-braun-representative-garamendi-reintroduce-bipartisan-stop-price-gouging-the-military-act>.

⁴⁶ Department of Defense Ethics and Anti-Corruption Act of 2021, S.2396, <https://www.congress.gov/bill/117th-congress/senate-bill/2396/text>.

⁴⁷ Letter from TransDigm CEO Kevin Stein to U.S. Senator Elizabeth Warren, June 12, 2023, p. 2 [On file with the Office of U.S. Senator Elizabeth Warren].

3. Is DoD aware of any Boeing policies that prohibit sharing cost or pricing data between business units?
 - a. If so, do those policies prohibit sharing commercial pricing cost or pricing data?
 - b. Are there any waivers for those policies?
 - c. In how many cases have these Boeing policies resulted in the company refusing to provide cost or pricing data to DoD?
 - d. Have you reviewed these policies to determine if they are consistent with DoD rules on the provision of cost or pricing data, or other DoD contracting rules?

DoD's role:

1. How is each HCA exemption documented?
2. What qualifications are required for becoming an HCA at DoD? What ethics standards are HCA required to uphold?
3. In how many cases has an HCA determined that it is in the best interest of the Government to make an award despite “the contracting officer’s inability to establish price reasonableness” in the past five years?⁴⁹ Please provide a list of all such cases.
4. In how many cases has a contracting officer decided to cancel an acquisition due to insufficient cost or pricing data? Please provide details for each of the past five years.
5. In how many cases has a contracting officer needed to elevate a decision because:⁵⁰
 - a. The available data does not support the reasonableness of the offered price;
 - b. The item or service is required in support of the mission
 - c. There are no current alternatives to acquiring it from the contractor in question.⁵¹
6. Please provide a non-CUI example of the process by which DoD official requests cost or pricing data, the data denial, and the elevation procedure the denial goes through. On average, how long does each step of this process take?
7. As noted above, DoD shared that there are cases when elevation of data denial is not necessary. In instances where contractors provide some but not all requested data, what is the process used by DoD to ensure that missing data is not needed to establish a reasonable price?⁵² Specifically, what percentage of cost and pricing data denials have not been elevated in each of the last five full years?

⁴⁸ 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. 4 [On file with the Office of U.S. Senator Elizabeth Warren].

⁴⁹ Letter from U.S. Department of Defense Under Secretary of Defense for Acquisition and Sustainment William LaPlante to U.S. Senator Elizabeth Warren, June 9, 2023, Question 11 [On file with the Office of U.S. Senator Elizabeth Warren].

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

8. When a contractor claims that requested cost or pricing data does not exist, what is the process used by DoD to confirm that this is the case?⁵³
9. How often does a contractor share with DoD that the requested cost or pricing data does not exist?⁵⁴
10. DoD shared that if a contracting officer has concerns they did not receive data, they can request the Defense Contract Audit Agency conduct a post award audit.⁵⁵ How many post-award audits have been requested in the past five years? How many of those audits were conducted? What was the outcome of each of these audits?
11. How does the DoD measure and determine the “risk to the Government if [the] award is not made”⁵⁶?
12. Please provide examples in which a DoD contracting officer was denied the data, why there is no alternative but to procure the item from the source denying the data, and a written plan to avoid similar situations in the future.⁵⁷
13. Given the prevalence of TransDigm, Boeing, and potentially other contractors utilizing a loophole in the TINA reporting requirement threshold, has DoD conducted a cost analysis on the impacts of changing TINA? If so, please provide the results.
14. In the past five years, has DoD questioned or challenged an assertion of commerciality? Please provide a list and details of such cases, including steps taken by DoD.
15. DoD shared that “there could be instances where the Department purchases less due to increases in prices”⁵⁸ and in addition to pursuing increased competition, the DoD believes “reverse engineering” is an important part of its sourcing toolkit moving forward.⁵⁹ Because DoD does not have the intellectual property rights to manufacture parts itself or award a contract with a competitor company, companies such as TransDigm have little incentive to respond to government requests, or to negotiate a fair and reasonable price.⁶⁰
16. How many times would a company have to overcharge the federal government or refuse to provide cost or pricing information for DoD to determine the company is no longer a “responsible” contractor?⁶¹ Has DoD considered whether to exercise its rights – including

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*, question 12.

⁵⁶ *Id.*, question 3.

⁵⁷ *Id.*, question 10.

⁵⁸ *Id.*, question 17.


⁵⁹ *Id.*, question 18.

⁶⁰ U.S. Congressional Research Service, “Intellectual Property and Technical Data in DOD Acquisitions,” April 22, 2022, p. 2, <https://crsreports.congress.gov/product/pdf/IF/IF12083>.

⁶¹ *Id.*; FAR 9.1, <https://www.acquisition.gov/far/subpart-9.1>.

march-in-rights which allow the DoD to grant licenses to other parties or take a license over⁶² – under the Bayh-Dole Act?

Sincerely,



Elizabeth Warren
United States Senator



John Garamendi
Member of Congress
Ranking Member,
Subcommittee on Readiness

CC: The Honorable William A. LaPlante, Under Secretary of Defense for Acquisition and Sustainment, U.S. Department of Defense

⁶² §401.14J, <https://grants.nih.gov/grants/bayh-dole.htm>; 37 CFR § 401.6.