

Congress of the United States

Washington, DC 20515

November 29, 2023

Kevin M. Stein
President and CEO
TransDigm Group Inc.
1301 East 9th St., Suite 3000
Cleveland, OH 44114

Dear Mr. Stein,

We write to request additional information following TransDigm's response to our May 2023 letter.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*, released in January 2023, found that TransDigm accounted for all Defense Logistics Agency cost or pricing data denials (401) in FY2022.² This report shows that TransDigm Group continues to abuse loopholes that allow the company to refuse to provide the data necessary for the government to prevent overcharges and protect taxpayers and DoD. Your response to our letter was insufficient and raised further questions about your company's conduct.

The new DoD report indicates that TransDigm is once again relying on "asserted commerciality" to avoid providing pricing data in 90 percent of cases.³ Under federal contracting law, such an assertion allows contractors to deny producing cost or pricing.⁴ 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."⁵ DoD needs access to cost or pricing data in order negotiate a fair and reasonable price to prevent price gouging. TransDigm, along with other industry participants, has worked to make it easier for military products to be labeled as "commercial."⁶ The current legal definition of a "commercial product" includes language "of a type" that allows for it a part to be similar to something sold to other customers even when the

¹ 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," press release, 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>.

² 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 [On file with the Office of U.S. Senator Elizabeth Warren].

³ *Id.*, p. 4.

⁴ 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>.

⁵ 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>.

⁶ Politico, "In House bill, arms makers wrote their own rules," Austin Wright and Leigh Munsil, May 12, 2015, <https://www.politico.com/story/2015/05/in-house-bill-arms-dealers-wrote-their-own-rules-117842>.

federal government is the only buyer.⁷ TransDigm’s claims that “products manufactured for commercial aircraft have near identical military counterparts” which allows TransDigm to evade reporting of cost or pricing data.⁸

In response to our letter, TransDigm claims that “every review by the DoD has consistently found that TransDigm companies followed all applicable laws and regulations” and the company “question[s] an assertion that TransDigm companies refused to provide cost or pricing data supporting the reasonableness of their prices.” TransDigm also claims they are “not currently aware of any such instances” 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* shows otherwise. And 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.”⁹

In addition to claiming commerciality, TransDigm also refused to provide information about how many transactions in the last year fell below and above the *Truth in Negotiation Act* (TINA) threshold. The *Truth in Negotiation Act*, later renamed the *Truthful Cost or Pricing Act*, requires the government to obtain data to determine whether prices are fair and reasonable.¹⁰ This data is necessary for the Department to ensure government contracts are at a fair and reasonable price. In multiple DoD IG reports, the vast majority of TransDigm transactions were below the threshold. 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.¹¹ More recent IG testimony found that between 2017 and 2019, 95 percent¹² of TransDigm contracts were below the TINA threshold. TransDigm also refused to provide information about how many transactions in the last year fell below and above the TINA threshold in response to us.¹³ Your refusal to provide us with requested data – combined with the IG’s data – appears to indicate gaming of the size of contracts to keep

⁷ FAR 2.101, <https://www.acquisition.gov/far/2.101#:~:text=Commercial%20product%20means%E2%80%94to%20the%20general%20public%3B%20or>.

⁸ 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].

⁹ Email from U.S. Department of Defense to U.S. Senator Elizabeth Warren, June 29, 2023 [On file with the Office of U.S. Senator Elizabeth Warren].

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

¹¹ 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>.

¹² 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>.

¹³ 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].

transactions under this threshold and avoid having to provide cost or pricing data, raising further concerns about whether your company is profiteering at taxpayer expense.

TransDigm's refusal to work with the government to calculate and repay excess profit is also troubling. In our previous letter we highlighted that in December 2021, the DoD IG recommended that, to provide redress for past overcharges, the Defense Logistics Agency (DLA) should "seek a voluntary refund from TransDigm of at least \$20.8 million in excess profit,"¹⁴ and there has been no public update of the status of the refund. In your letter to us, you share that you are "concerned with the arbitrary nature in which the voluntary amount [to be refunded to DoD] was calculated."¹⁵ However, you did not address what the amount should be, or how the company would remedy the price gouging moving forward.

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 DoD has also highlighted these concerns, sharing with us that "there could be instances where the Department purchases less due to increases in prices."¹⁷

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

1. In your response, you shared that "thousands of [TransDigm companies'] products manufactured for commercial aircraft have near identical military counterparts."¹⁸ Does TransDigm or its subsidiaries disclose to DoD what it charges to commercial companies?
2. How often has DoD requested certified cost or pricing data from TransDigm and its subsidiaries in each of the last five years? How many times did TransDigm or its subsidiaries fail to provide all requested certified cost or pricing data?

¹⁴ 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-%20043%20508.PDF>.

¹⁵ Letter from TransDigm CEO Kevin Stein to U.S. Senator Elizabeth Warren, June 12, 2023, p. 3 [On file with the Office of U.S. Senator Elizabeth Warren].


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

¹⁸ 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. In your response, you share that you are “concerned with the arbitrary nature in which the voluntary amount [to be refunded to DoD] was calculated.” In your view, what is the correct calculation and resulting amount?¹⁹
4. In your response, you claim that DoD favors “small-quantity, short-term orders.”²⁰ How does this favoritism manifest in TransDigm contracts with the federal government? How many long-term or multi-year contracts does TransDigm currently have with the federal government?
5. How many contracts does TransDigm currently have with the federal government that are below the TINA threshold? How many are above that threshold?
6. How many contracts does TransDigm currently have with private customers that are below the TINA threshold? How many are above that threshold?
7. Because this was not addressed in your response, how many TransDigm transactions with DoD in the last year fall below the TINA threshold? How many were above that threshold?

Sincerely,



Elizabeth Warren
United States Senator



John Garamendi
Member of Congress
Ranking Member,
Subcommittee on Readiness

¹⁹ *Id.*, p. 3.

²⁰ *Id.*, p. 2.