

United States Senate

WASHINGTON, DC 20510

May 28, 2024

VIA ELECTRONIC TRANSMISSION

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

Dear Secretary Austin,

We write to express our concerns that the Department of Defense (DoD) is not obtaining timely cost and pricing information necessary to negotiate fair prices with DoD contractors because of these contractors' abusive practices. We are particularly concerned about "sweeping," the practice by which contractors do not submit "cost or pricing data that were reasonably available at the time of price agreement."¹ In fiscal year 2022, the DoD awarded \$414.5 billion in contracts to the defense industrial base.² Accordingly, receiving available and relevant pricing data at the time of agreement would allow DoD officials to strike better deals for the taxpayer.

We continue to be concerned by audits and press reports that find defense contractors regularly gouge the military.³ The DoD's Inspector General (IG) found TransDigm Group, a large defense contractor, "overcharged the military by at least \$16 million" with profit "margins up to 4,451 percent" for key parts and supplies.⁴ Another DoD IG report found "that same [contractor] cheated the government out of another \$21 million by pricing items at up to 3,850 percent more than the reasonable cost."⁵ Last year, a CBS News investigation uncovered several defense contractors repeatedly overcharged the DoD to secure excess profits of 40 to 50 percent, costing the Pentagon, and taxpayer, hundreds of millions of dollars.⁶ We have made clear this abuse is not acceptable. Following the CBS News investigation, we urged the Secretary of Defense to investigate price gouging and follow GAO's financial management recommendations.⁷

¹ Defense Contract Audit Agency, "DCAAM 7640.1; DCAA Contract Audit Manual," chapter 14, p. 33, <https://www.dcaa.mil/Portals/88/Documents/Guidance/CAM/Chapter%2014%20Other%20Contract%20Audit%20Assignments.pdf?ver=CF-j6io9SKfawNSSXQpCwQ%3D%3D>.

² U.S. Government and Accountability Office, "A Snapshot: Government-Wide Contracting," 2022, https://gaoinnovations.gov/Federal_Government_Contracting/.

³ 60 Minutes, "How the Pentagon falls victim to price gouging by military contractors," Aliza Chasan, May 21, 2023, <https://www.cbsnews.com/news/pentagon-budget-price-gouging-military-contractors-60-minutes-2023-05-21/>.

⁴ The Intercept, "Sen. Elizabeth Warren and Rep. John Garamendi Launch Plan to Stop Defense Contractor Price Gouging," Sara Sirota, June 9, 2022, <https://theintercept.com/2022/06/09/defense-contractor-price-gouging-elizabeth-warren-john-garamendi>.

⁵ *Id.*

⁶ *Supra* note 3.

⁷ Letter from Senators Grassley, Warren, others to Secretary of Defense Lloyd Austin, May 24, 2023, https://www.grassley.senate.gov/imo/media/doc/sanders_grassley_et_al_to_defense_deptpricegougingbycontractors.pdf

Instead of providing appropriate information prior to reaching an agreement, contractors have drowned DoD contracting officers in a deluge of documents and data immediately post-handshake, using this tactic to release themselves of liability and potentially hide data that might give the DoD a better price. This practice costs billions of dollars and allows contractors to collect excessive profits on the backs of the taxpayers.

In 2018, then-director of Defense Pricing/Defense Procurement and Acquisition Policy, Shay Assad, issued a memo on how contracting officials should address “sweeping.”⁸ Assad’s memo described how the practice may be indicative of deficiencies in the contractor’s ability to estimate prices.⁹ The memo aimed to reduce delays in acquisitions by setting a deadline for contractors to submit the Certificate of Current Cost or Pricing Data “as soon as practicable, but no later than five business days” after the price agreement is reached.¹⁰ The memo also instructed officers to defer consideration of “sweep data” until after the contract award and that the data be considered defective pricing if it would have changed the price the government paid.¹¹ It also highlighted that, if a contractor’s “sweeping” behavior is “habitual, appropriate corrective action should be taken” to correct it.¹²

Further, DoD and its practices are frequently included on the Government Accountability Office’s (GAO) “High Risk List,” a list “of programs and operations that are vulnerable to waste, fraud, abuse or mismanagement, or in need of transformation.”¹³ During a hearing before the Senate Armed Services Committee’s Subcommittee on Personnel, GAO Director for Defense Capabilities and Management Elizabeth Field testified that, “DoD has more areas on the high risk list [than] any other agency.”¹⁴

DoD contractors should not be getting away with price gouging, and these abusive practices. DoD must better explain the challenges it faces with the contract process that has caused the government to overpay for goods and services and what steps DoD has taken to solve the problem. Accordingly, we request answers to the following questions by June 12, 2024:

1. Do companies provide the certificate of current cost or pricing data in advance of the “sweep”? If not, does the sweep hold up receipt of the certificate of current cost or pricing data? If so, does the sweep hold up contract award?
2. Does the practice of sweeping delay the overall contract process?
3. How long can the “sweep” process take?

⁸ Office of the Under Secretary of Defense for Acquisition and Sustainment, “Reducing Acquisition Lead Time by Eliminating Inefficiencies Associated with Cost or Pricing Data Submissions After Price Agreement (“Sweep Data”),” memorandum, June 7, 2018, <https://www.acq.osd.mil/dpap/policy/policyvault/USA000646-18-DPAP.pdf>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*


¹² *Id.*


¹³ U.S. Government Accountability Office, High Risk List, April 2023, <https://www.gao.gov/high-risk-list>.


¹⁴ Senate Armed Services Committee, Subcommittee on Personnel, “To Receive Testimony On Potential Budgetary Efficiencies Achieved Through Improvement To Management And Planning Processes Within Department Of Defense Personnel Programs,” transcript, July 26, 2023, p. 45, https://www.armed-services.senate.gov/imo/media/doc/transcript_23-62_07-26-2023.pdf.


4. How extensive is the practice of sweeping with DoD contractors?
5. Please provide examples where contractors have performed the practice of sweeping during a DoD contract process from January 1, 2018 until April 30, 2024.
6. Does the practice of sweeping provide any advantages or disadvantages to the contract officer?
7. Does the practice of sweeping provide any advantages or disadvantages to the contractors?
8. Is there a process for contracting officers to report when a contractor “sweeps”?
9. Can the sweep process result in a second negotiation? If so, does this hold up contract award?
10. What other practices do companies perform during contract negotiations that either delay contracts or prevent DoD from ensuring they are receiving a good price?
11. What action does DoD take to prevent contractors from providing sweep data?
12. What corrective action does DoD take when companies are found to habitually provide sweep data?
13. What impact would adding data sweeping as an invalid defense have on DoD’s ability to negotiate fair and reasonable prices?
14. What, if any, training does DoD provide to contracting officers and acquisition officers on how to identify and avoid sweep data while engaging in DoD contracts or acquiring goods or services? How often does this training occur?

Sincerely,


Elizabeth Warren
United States Senator


Charles E. Grassley
United States Senator


Mike Braun
United States Senator


John Fetterman
United States Senator