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April 9, 2019

VIA ELECTRONIC TRANSMISSION

Patrick M. Shanahan
Acting Secretary of Defense
3010 Defense Pentagon
Washington, DC 20301-3010

Dear Acting Secretary Shanahan:

The Department of Defense (Department) is seeking vendors to help it build a comprehensive cloud computing system, known as the Joint Enterprise Defense Infrastructure (JEDI) program.¹ The vendor awarded the indefinite delivery/indefinite quantity contract to construct and maintain JEDI has the potential to receive up to \$10 billion over a ten year performance period.² According to multiple news reports, two individuals affiliated with Amazon Inc. were employed by the Department and responsible, in part, for crafting central and confidential aspects of a single-award contract for JEDI.³ Critics allege that their role indicates the Department tailored the contract to favor Amazon in violation of the Federal Acquisition

¹ Jared Serbu, *DOD's new JEDI investigation is focused on one Amazon employee, court filings say*, Federal News Network (Feb. 22, 2019), available at <https://federalnewsnetwork.com/defense-main/2019/02/court-filings-offer-additional-details-on-dods-jedi-conflict-of-interest-probe/>; Department of Defense Press Release, *Contract Milestone Brings Enterprise Cloud Solution One Step Closer to Warfighter*, July 26, 2018, available at <https://dod.defense.gov/News/News-Releases/News-Release-View/Article/1584975/contract-milestone-brings-enterprise-cloud-solution-one-step-closer-to-warfighter/>; see also Ron Miller, *Jeff Bezos is just fine taking the Pentagon's \$10B JEDI cloud contract*, Tech Crunch (Oct. 15, 2018), available at <https://techcrunch.com/2018/10/15/jeff-bezos-is-just-fine-taking-the-pentagons-10b-jedi-cloud-contract/>.

² Carl Weinschenk, *AWS, Oracle, and the Pentagon Continue Fight Over JEDI Cloud Contract*, SDX Central (Jan. 28, 2019), available at <https://www.sdxcentral.com/articles/news/aws-oracle-and-the-pentagon-continue-fight-over-jedi-cloud-contract/2019/01/>.

³ See Julie Bort, *There's a new snag for Amazon in the winner-take-all \$10 billion Pentagon cloud contract, and it could be good news for Microsoft*, Business Insider (Feb. 19, 2019), available at <https://www.businessinsider.com/amazon-jedi-cloud-contract-snag-2019-2>; see also Katishi Maake, *Reported revelation pauses legal fight over JEDI procurement*, Washington Business Journal (Feb. 21, 2019), available at <https://www.bizjournals.com/washington/news/2019/02/21/reported-revelation-pauses-legal-fight-over-jedi.html>.

Regulation (FAR).⁴ Some industry experts also have speculated that this contract could unfairly restrict future competition for Department cloud services.⁵

Two other vendors, Oracle America Inc. and the IBM Corporation, filed independent pre-award bid protests with the Government Accountability Office (GAO) challenging both the terms of the request for proposals issued by the Department and the aforementioned conflicts of interest.⁶ GAO denied Oracle's claim and Oracle has subsequently brought suit on the same terms in the Court of Federal Claims.⁷

JEDI would provide both classified and unclassified cloud services to the entire Department (streamlining its current system consisting of hundreds of independent servers), as well as establish and promote a platform for machine learning, and act as a testing ground for artificial intelligence (AI) capabilities.⁸ The system AI capabilities would improve information sharing throughout the Department and the intelligence community, and allow warfighters to compile, analyze, and utilize data from a single source. Despite those perceived advantages, however, some industry experts and trade groups assert that the "[d]eployment of a single cloud conflicts with established best practices and industry trends in the commercial marketplace, as

⁴ See Bort, *supra* n. 3; see also FAR 6.101(a) & (b); see also FAR 3.301(a) & (b).

⁵ Ron Miller, *Why the Pentagon's \$10 billion JEDI deal has cloud companies going nuts*, Tech Crunch (Sep. 15, 2018), <https://techcrunch.com/2018/09/15/why-the-pentagons-10-billion-jedi-deal-has-cloud-companies-going-nuts/>.

⁶ Aaron Gregg, *GAO axes IBM's bid protest, teeing up a court battle over Pentagon's \$10 billion cloud effort*, WASH. POST (Dec. 11, 2018), available at https://www.washingtonpost.com/business/2018/12/12/gao-axes-ibms-bid-protest-teeing-up-court-battle-over-pentagons-billion-cloud-effort/?utm_term=.781b4670547a; see also IBM Corporation, B-416657.5 et al. (Comp. Gen. Dec. 11, 2018) (hereinafter IBM GAO Protest); see also Oracle America, Inc., B-416657 et al. (Comp. Gen. Nov. 18, 2018) (hereinafter "Oracle GAO Protest").

⁷ See IBM GAO Protest, *supra* n. 6; see also Oracle GAO Protest, *supra* n. 6; Ralph O. White, *GAO Statement on Oracle Bid Protest*, Government Accountability Office (Nov. 14, 2018), https://www.gao.gov/about/press-center/press-releases/read/oracle_bid_protest_nov_2018.htm; Ron Miller, *IBM files formal JEDI protest a day before bidding process closes* (Oct. 12, 2018), available at <https://techcrunch.com/2018/10/12/ibm-files-formal-jedi-protest-a-day-before-bidding-process-closes/>; Memorandum of Law in Favor of Plaintiff's Motion for Summary Judgment on the Administrative Record, Oracle America, Inc. v. United States, Case No. 18-1880C (C.F.C. 2019), available at https://federalnewsnetwork.com/wp-content/uploads/2019/02/021219_oracle_memo_motion_for_judgment.pdf.

⁸ See Deputy Secretary of Defense Memorandum, DoD Cloud Strategy, Department of Defense 2, 11, (Dec. 2018), available at <https://media.defense.gov/2019/Feb/04/2002085866/-1/-1/1/DOD-CLOUD-STRATEGY.PDF>; see also Ben Tarnoff, *Weaponised AI is coming. Are algorithmic wars our future?*, The Guardian (Oct. 11, 2018), available at <https://www.theguardian.com/commentisfree/2018/oct/11/war-jedi-algorithmic-warfare-us-military>; see also Naomi Nix, *Google Drops Out of Pentagon's \$10 Billion Cloud Competition*, Bloomberg (Oct. 8, 2018), available at <https://www.bloomberg.com/news/articles/2018-10-08/google-drops-out-of-pentagon-s-10-billion-cloud-competition>; see also Patrick Tucker, *Google is Pursuing the Pentagon's Giant Cloud Contract Quietly, Fearing an Employee Revolt*, Defense One (Apr. 12, 2018), available at <https://www.defenseone.com/technology/2018/04/google-pursuing-pentagons-giant-cloud-contract-quietly-fearing-employee-revolt/147407/>; see also Cheryl Pellerin, *Project Maven to Deploy Computer Algorithms to War Zone by Year's End*, Department of Defense (July 21, 2017), available at <https://dod.defense.gov/News/Article/Article/1254719/project-maven-to-deploy-computer-algorithms-to-war-zone-by-years-end/>; see also Daisuke Wakabayashi and Scott Shane, *Google Will Not Renew Pentagon Contract That Upset Employees*, N. Y. TIMES (June 1, 2018), available at <https://www.nytimes.com/2018/06/01/technology/google-pentagon-project-maven.html>.

well as current law and regulation, which calls for the award of multiple task or delivery order contracts.”⁹

At the request of the Department, the Court of Federal Claims has granted an unopposed motion to stay the proceedings of Oracle’s claim in order to grant the Department the ability to reconsider “whether possible personal conflicts of interest impacted the integrity of the JEDI Cloud procurement” process.¹⁰ In an effort to conduct oversight of this review process and ensure that future concerns involving conflicts of interest are resolved earlier in the contracting process, please answer the following no later than April 23, 2019:

1. What internal policies does the Department have in place to ensure that Requests for Procurement (RFP) and subsequent government contracts are not drafted so that they are tailored to match the specific technical capabilities of a particular company when that company does not qualify for a sole source contract as per FAR 6.101 and FAR 3.301? Were these policies adhered to in this case? If not, why not?
2. Please provide copies of current Department policy and procedures that address potential conflicts of interest in the contracting process. Please include any policies and procedures that address roles and responsibilities in drafting contracts and requests for proposals, and in reviewing those processes for potential conflicts.
 - a. Are any of these policies and procedures subject to independent review or audit?
 - b. Is it common practice for individuals representing or associated with potential bidders to draft contracts or requests for proposals?
 - c. To what extent did the Department follow its policies and procedures addressing potential conflicts of interest in designing the JEDI contract?
3. Department officials have reportedly described JEDI Cloud as a “pathfinder” intended to provide a model for the Department’s future transition of legacy IT systems to the cloud. Please describe any related efforts to ensure full and open competition for future Department cloud services contracts.

⁹ Letter from A.R. “Trey” Hodgkins, III, Sr. V. President, Public IT Alliance for Public Sector, to Chairman John McCain, Senate Armed Services Committee, et al. (Apr. 30, 2018), available at <https://www.nextgov.com/media/gbc/docs/pdfsedit/043018fk2ng.pdf>; see also Dave Deptula, *The Perils of JEDI: A Single Cloud Provider For The Pentagon And CIA Could Spell Disaster*, Forbes (Feb. 27, 2019), available at <https://www.forbes.com/sites/davedeptula/2019/02/27/jedi-and-why-its-important-a-single-cloud-provider-for-both-dod-and-cia-could-spell-disaster/#7751e19a6477> (stating that the Central Intelligence Agency has also awarded Amazon a cloud computing contract).

¹⁰ See Oracle America, Inc. v. United States, Case No. 18-1880C (C.F.C. 2019), available at https://federalnewsnetwork.com/wp-content/uploads/2019/02/021919_JEDI_cofc_stay.pdf.

- a. The Department has also said that it “expects to maintain contracts with numerous cloud providers to access specialized capabilities not available under the JEDI Cloud contract.” Please describe these specialized capabilities, as well as any related efforts to ensure full and open competition for related contracts.
4. In a May 2018 report to Congress, the Department indicated that the “underlying documentation required by the Federal Acquisition Regulation to support the single award ID/IQ approach is still under development within the Department.” The Department also said that it would not release the final JEDI solicitation until it executed the underlying justification documents. Please provide the Department’s justification supporting the use of a single award ID/IQ approach for the JEDI contract.
5. In September 2018, the OMB published their CLOUD SMART Strategy Proposal.¹¹ How does the JEDI program and procurement process align with the Federal government-wide strategy outlined in the aforementioned document?

Should you have questions, please contact Daniel Boatright of my Committee staff at (202) 224-4515. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley
Chairman
Senate Committee on Finance

¹¹ OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, *From Cloud First to Cloud Smart*, (Sept. 24, 2018), available at <https://cloud.cio.gov/strategy/>; see also, THE WHITE HOUSE, *OMB Announces Cloud Smart Proposal* (Sept. 24, 2018), available at <https://www.whitehouse.gov/briefings-statements/omb-announces-cloud-smart-proposal/>.