

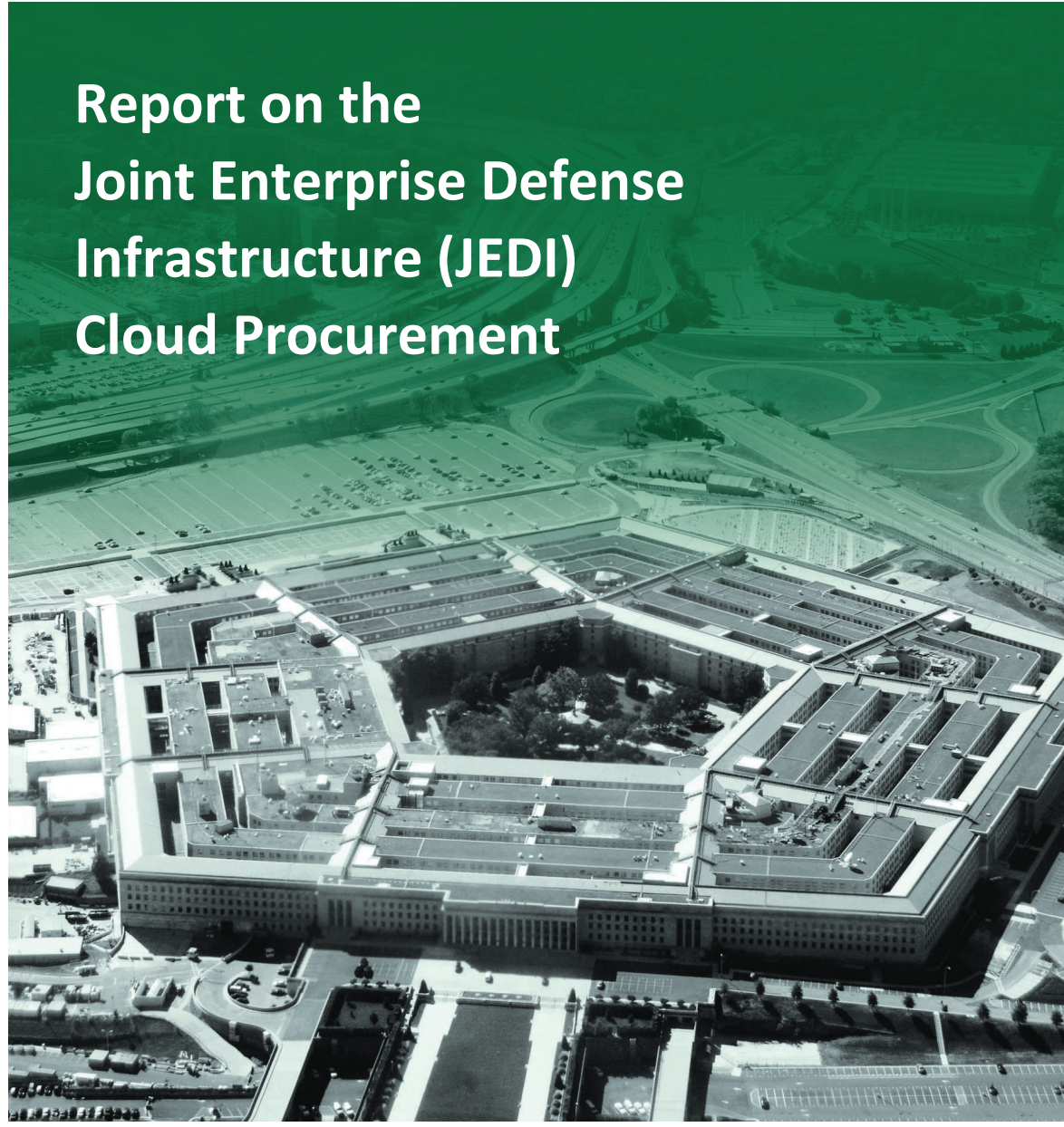
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INSPECTOR GENERAL

U.S. Department of Defense

April 13, 2020



Report on the Joint Enterprise Defense Infrastructure (JEDI) Cloud Procurement

INTEGRITY ★ INDEPENDENCE ★ EXCELLENCE

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**DEPARTMENT OF DEFENSE OFFICE OF INSPECTOR GENERAL
REPORT ON THE
JOINT ENTERPRISE DEFENSE INFRASTRUCTURE CLOUD PROCUREMENT**

I. INTRODUCTION AND SUMMARY

This report presents the results of the DoD Office of Inspector General (OIG) review of the DoD Joint Enterprise Defense Infrastructure (JEDI) Cloud procurement process and our investigation into allegations that former DoD officials engaged in ethical misconduct related to the JEDI Cloud procurement.

The JEDI Cloud procurement provides a contract vehicle through which DoD organizations can obtain cloud computing services. Cloud computing is a subscription-based service that provides on-demand storage, networking, servers, software applications, and other computing services. It allows users to store and access data and programs over the internet rather than on a computer hard drive. Users can access information from anywhere at any time, removing the need for the user to be in the same physical location as the hardware that stores the data.

On July 26, 2018, the DoD issued a Request for Proposals to obtain cloud computing services using a single-award Indefinite Delivery/Indefinite Quantity contract. The Request for Proposals stated that the contract would have a maximum value of \$10 billion, over a potential 10-year performance period, if the DoD exercised all option periods.

On August 6, 2018, Oracle of America, Incorporated (Oracle) challenged the terms of the RFP in a protest filed with the Government Accountability Office. On October 10, 2018, International Business Machines Corporation (IBM) filed a similar protest with the Government Accountability Office.¹

On October 22, 2018, Representatives Steven Womack and Tom Cole, U.S. House of Representatives, sent a letter to the DoD OIG requesting an investigation of the processes the DoD used to develop the JEDI Cloud procurement requirements and the RFP. Representatives Womack and Cole expressed concern that some requirements were written to favor one specific contractor.² They also asserted that the structure of the proposed procurement, in particular a decision to award a contract to a single contractor, was inconsistent with industry best practices and acquisition standards. In addition, the Representatives raised concerns about the acquisition strategy and referred to media reports

¹ The Government Accountability Office denied the Oracle protest on November 14, 2018, and dismissed IBM's protest on December 11, 2018. On December 6, 2018, Oracle filed a protest in the U. S. Court of Federal Claims. The court entered a judgment in favor of the DoD on July 19, 2019. We refer to these protests, as appropriate, throughout this report. Summaries of the GAO decisions and the court's opinion are contained in Appendices A and B of this report.

² Federal Acquisition Regulation Part 9, "Contractor Qualifications," Subpart 9.4, "Debarment, Suspension, and Ineligibility," Section 9.403, defines a contractor as any individual or other legal entity that directly or indirectly submits offers for or is awarded a Government contract or a subcontract under a Government contract.

asserting that DoD officials who held high-ranking positions within the DoD had “significant connections” to Amazon, a bidder on the JEDI Cloud contract.³

In addition to the Representatives’ letter, various news articles reported similar allegations. For example, among many others, a *Fox News* article stated that according to one of the competitors for the JEDI Cloud contract, “the process was rigged from the beginning due to connections between Amazon and DoD officials...” An article in *Bloomberg* stated that it had obtained a copy of a 33-page “salacious” dossier that portrayed “a web of conflicts to cast doubt on the integrity of the cloud procurement,” with allegations that “Defense Department officials participated in shady activities, all of which gave Amazon an edge.”

Between March 2019 and October 2019, the DoD OIG received similar allegations in a series of complaint letters that Oracle, one of the JEDI Cloud contract competitors, sent to the DoD OIG. These letters alleged that former DoD officials engaged in ethical misconduct related to their financial disclosures, their participation in the JEDI Cloud procurement, or their post-Government employment, which Oracle alleged affected the JEDI procurement. The former DoD officials were:

- James N. Mattis, former Secretary of Defense;⁴
- Sally Donnelly, former Senior Advisor to Secretary Mattis;
- Anthony DeMartino, former Chief of Staff to the Deputy Secretary of Defense;
- Robert Daigle, former Director, Cost Assessment and Program Evaluation;
- Victor Gavin, former Deputy Assistant Secretary of the Navy for Command, Control, Communications, Computers, Intelligence, Information Operations and Space; and
- Deep Ubhi, former Product Manager, Defense Digital Service.

On July 25, 2019, Senator Marco Rubio, in a letter to the Secretary of Defense, expressed concerns that Mr. Gavin and Mr. Ubhi were allegedly involved in the JEDI Cloud procurement and did not recuse themselves during their separate employment negotiations with Amazon. Senator Rubio further asserted that both Mr. Gavin and Mr. Ubhi might have accepted employment with Amazon before leaving the DoD and their roles in the JEDI Cloud procurement.

On October 3, 2019, the DoD OIG received an allegation that Ms. Stacy Cummings, Principal Deputy Assistant Secretary of Defense for Acquisition and Deputy Assistant Secretary of Defense for Acquisition Enablers, improperly participated in the JEDI Cloud procurement while holding a financial interest in Microsoft.

³ Amazon Web Services, Inc. (AWS), is a subsidiary of Amazon.com, Inc., and a competitor in the JEDI Cloud procurement. For clarity, we distinguish AWS from Amazon where appropriate in this report.

⁴ James Mattis was the Secretary of Defense from January 20, 2017, through December 31, 2018. We refer to him as Secretary Mattis throughout this report.

Other media articles also reported on President Trump's statements that he had received complaints from industry about the JEDI Cloud procurement that should be investigated. In addition, a former member of Secretary of Mattis' staff wrote a book in which he stated that in the summer of 2018, President Trump called Secretary Mattis and told him to "screw Amazon" out of a chance to bid on the contract.

Amazon also alleged that the JEDI Cloud procurement was influenced by pressure from the White House against awarding the contract to Amazon.

On October 25, 2019, the DoD announced that it had awarded the JEDI Cloud contract to the Microsoft Corporation.

Scope of the DoD OIG Review and Investigation

This report discusses the results of our review and investigation of these allegations. We reviewed the DoD's decision to award the JEDI Cloud contract to a single contractor; the development of the requirements in the Request for Proposals; the DoD's source selection process; the disclosures of source selection and proprietary information after contract award; and whether the White House influenced the JEDI Cloud source selection. Specifically, we reviewed whether:

- the DoD's decision to award the JEDI Cloud Indefinite Delivery/Indefinite Quantity contract to a single contractor was consistent with applicable acquisition standards;
- the JEDI Cloud Request for Proposals was consistent with applicable acquisition standards;
- the DoD followed DoD and Federal standards, DoD Source Selection Procedures and Request for Proposals, Sections M1 – Basis for Award and M2 – Evaluation Process during the source selection process;
- the disclosure of source selection information and Microsoft's proprietary information after the JEDI Cloud contract award violated the Federal Acquisition Regulation or DoD policy; and,
- the JEDI Cloud contract source selection was improperly influenced, including alleged influence from the White House.

To be clear, our review did not assess the appropriateness of the DoD's award of the JEDI Cloud contract to Microsoft rather than AWS. We did not review the merits of the contractors' proposals or DoD's technical or price evaluations; rather, we reviewed the source selection process and whether it was in compliance with applicable statutes, policies, and the evaluation process described in the Request for Proposals, and also whether it was influenced by outside pressure.⁵

We include excerpts from the applicable standards relating to our review of the JEDI Cloud procurement in Appendix C to this report.

⁵ See Section III.3.b, *Evaluation of JEDI Cloud Proposals*.

We also investigated allegations of ethical misconduct relating to JEDI. Specifically, we investigated allegations that DoD officials:

- had financial interests that conflicted with duties that related to the JEDI Cloud procurement;
- had personal or business relationships that might cause a reasonable person to question whether they could perform their duties impartially;
- failed to disclose a conflicting financial interest or relationship;
- failed to comply with standards that govern seeking post-Government employment;
- improperly participated in the JEDI Cloud procurement despite being conflicted;
- provided preferential treatment for Amazon;
- improperly disclosed procurement information; or
- acted in a way that created an appearance of impropriety.

We include relevant standards, ethics agreements, and financial disclosures related to this investigation in Appendix D to this report.

The DoD OIG Review and Investigation

To conduct our review and investigation, we assembled a multidisciplinary team of DoD OIG auditors, criminal and administrative investigators, defense acquisition professionals, and attorney advisors. We examined approximately 31.2 gigabytes of e-mails and 1.05 gigabytes of relevant documents, including memoranda, reports, financial disclosure forms, disqualification statements, ethics pledges and other ethics documents, travel calendars, meeting agendas, and source selection and requirements development documentation. We also reviewed the market research, the final Request for Proposals and corresponding amendments, DoD and Federal policies related to acquisition, source selection and cloud computing, JEDI Cloud procurement and source selection documentation, Intelligence Community cloud strategy and cloud procurement documentation, congressional hearing transcripts related to JEDI, pre and post-award bid protests, prior Government Accountability Office reports on cloud procurement and oversight, and numerous media reports.

We also conducted more than 80 interviews, including the JEDI Cloud Procuring Contracting Officer, current and former program managers, attorneys, ethics officials, and other DoD officials involved in the JEDI procurement process. We interviewed officials from the Intelligence Community, the Defense Information Systems Agency, and the Federal Risk and Authorization Management Program about the challenges of information sharing and data security. We also interviewed other witnesses who were identified to us during our interviews as potentially having information relevant to our investigation.

We interviewed five of the six former DoD officials against whom allegations of misconduct were made. We attempted to interview the sixth, Mr. Ubhi; however, he declined our interview on the advice of his legal counsel. We also interviewed Ms. Cummings about the allegations regarding her.

To conduct our review of allegations of improper White House influence on the procurement, we interviewed 25 witnesses related to the source selection. These witnesses were DoD senior executives who were the most likely to have had direct contact with the White House; other DoD officials who reportedly heard Secretary Mattis talk about a phone call with President Trump; witnesses from the DoD Office of the Chief Information Officer, which oversaw the Cloud Computing Program Office; the Cloud Computing Program Office, which was responsible for managing the JEDI Cloud program; the Defense Digital Service, which initiated the procurement and provided subject matter expertise; and the source selection team, which evaluated proposals, made recommendations, and ultimately selected Microsoft. We also interviewed the Procuring Contracting Officer, who helped execute the procurement and awarded the contract. We reviewed slide presentations and other documents from JEDI Cloud procurement briefings presented to Secretary Esper and to White House officials from June 10 through September 23, 2019. We also reviewed congressional correspondence related to the JEDI procurement.

DoD OIG Conclusions

The JEDI Cloud Procurement Process

Our review of the JEDI Cloud procurement concluded that the DoD's decision to award the JEDI Cloud contract to a single contractor was consistent with applicable law and acquisition standards. The Procuring Contracting Officer determined that Federal Acquisition Regulation 16.504 required a single-award contract for the JEDI Cloud because a single-award contract would result in more favorable terms and conditions, including price for the DoD; the expected cost of administration of multiple contracts outweighed the expected benefit of making multiple contract awards; and multiple awards would not be in the best interests of the Government. We concluded that the procuring contracting officer's determination to use a single-award contract was in accordance with the Federal Acquisition Regulation and was reasonable. We also concluded that the Undersecretary of Defense for Acquisition and Sustainment's authorization for a single-award contract was consistent with applicable law.

In addition, we concluded that the JEDI Cloud requirements in the Request for Proposal were reasonable and based on approved requirements, essential cloud capabilities, DoD cloud security policy, and the Federal Risk and Authorization Management Program guidance. In addition, we concluded that the DoD's inclusion of gate requirements was reasonable and did not overly restrict competition. We also concluded that the DoD conducted the JEDI Cloud source selection in compliance with the FAR, the DoD Source Selection Procedures, the JEDI Cloud Source Selection Plan, and the Request for Proposals, Sections M1 – Basis for Award and M2 – Evaluation Process. We concluded that the source selection team's evaluation of the contractors' proposals was consistent with established DoD and Federal source selection standards.

We also note that on February 13, 2020, the U.S. Court of Federal Claims issued an opinion and order which granted Amazon's request for a preliminary injunction and stopped the DoD from proceeding with JEDI Cloud contract activities until further order of the court. The court concluded that Amazon is likely to demonstrate in the course of their bid protest that the DoD erred in its evaluation of

a discrete portion of Microsoft's proposal for the JEDI Cloud contract. The court's decision was not inconsistent with our conclusion that the source selection process used by the DoD was in compliance with the FAR, the DoD Source Selection Procedures, the JEDI Cloud Source Selection Plan, and the Request for Proposals, Sections M1 – Basis for Award and M2 – Evaluation Process. In this report, we do not draw a conclusion regarding whether the DoD appropriately awarded the JEDI Cloud contract to Microsoft rather than Amazon Web Services. We did not assess the merits of the contractors' proposals or DoD's technical or price evaluations; rather we reviewed the source selection process and determined that it was in compliance with applicable statutes, policies, and the evaluation process described in the Request for Proposals.

In addition, however, we concluded that after the JEDI Cloud Contract award, the DoD improperly disclosed source selection and proprietary Microsoft information to Amazon. In addition, the DoD failed to properly redact names of DoD source selection team members in the source selection reports that were disclosed to Amazon and Microsoft.

As a result of our review we recommend that the Acting Director for Contract Policy, Defense Pricing and Contracting, consider developing and implementing appropriate policy to require some level of documentation and analysis supporting key acquisition decisions, including any legal reviews and advice, for contracts that exceed the \$112 million threshold established by statute.

We also recommend that the Chief Management Officer, in coordination with the DoD General Counsel, consider administrative action against appropriate individuals for failing to review the redacted reports and attachments to the debriefing e-mails, and disclosing proprietary, proposal, and source selection information. Based on Management's response to the draft version of this report, we have also directed this recommendation for a response from the Principal Deputy General Counsel, as Chair of the DoD General Counsel/Defense Legal Services Agency Professional Conduct Board, in coordination with the WHS General Counsel.

We also recommend that the Washington Headquarters Services Acquisition Directorate Director, in coordination with the Washington Headquarters Services General Counsel, require training for Washington Headquarters Services officials handling acquisition-related matters on information not appropriate for disclosure and develop a standard redaction policy applicable to all acquisitions.

The responsible officials did not respond to the recommendations on the draft version of this report. Therefore, the recommendations are unresolved. We request that the appropriate officials provide comments on this final report.

Allegations of White House Influence on the JEDI Procurement

We sought to review whether there was any White House influence on the JEDI cloud procurement. We could not review this matter fully because of the assertion of a "presidential communications privilege," which resulted in several DoD witnesses being instructed by the DoD Office of General Counsel not to answer our questions about potential communications between White House and DoD officials about JEDI. Therefore, we could not definitively determine the full extent or nature of interactions that administration officials had, or may have had, with senior DoD officials regarding the JEDI Cloud procurement.

We provided the DoD Office of General Counsel with a list of questions, separated specific to each witness, and requested that they convey these questions to the White House Counsel's Office for review and determination as to whether the White House would in fact invoke the presidential communications privilege. The DoD Office of General Counsel told us they then asked White House Counsel to review the list of questions and identify the subject areas, or specific questions, over which the President would assert the presidential communications privilege.

After our repeated requests for a response, on February 25, 2020, the DoD Office of General Counsel stated that White House Counsel was only willing to allow witnesses to provide written answers to our questions where the presidential communications privilege was invoked; however, it stated that no representation could be made as to the number or extent of questions that could be answered, and that any written responses would require further review by White House Counsel on the issue of maintaining the privilege. We carefully considered this response and concluded it would not be an appropriate and practical way to conduct our review, because there was no assurance as to which questions would be answered, it would unduly delay the report, it would not allow for an interview and inevitable follow up questions, and it would not assure that we would be receiving full information from the witnesses. We therefore declined to proceed in this manner. We further discuss the details regarding this matter in Section III below.

However, we believe the evidence we received showed that the DoD personnel who evaluated the contract proposals and awarded Microsoft the JEDI Cloud contract were not pressured regarding their decision on the award of the contract by any DoD leaders more senior to them, who may have communicated with the White House. We interviewed the personnel involved in the factor evaluation and source selection processes, including factor and selection board chairs, the Source Selection Authority, and the Procuring Contracting Officer. Most of their identities and involvement in the procurement award were unknown to White House staff and even to the senior DoD officials. None of these witnesses told us they felt any outside influence or pressure for or against a particular competitor as they made their decisions on the award of the contract. These witnesses also told us that public statements from the President and "media swirl" about the contract did not directly or indirectly influence the integrity of the procurement process or the outcome of the JEDI Cloud source selection.

Yet, these media reports, and the reports of President Trump's statements about Amazon, ongoing bid protests and "lobbying" by JEDI Cloud competitors, as well as inaccurate media reports about the JEDI Cloud procurement process, may have created the appearance or perception that the contract award process was not fair or unbiased.

Alleged Ethical Misconduct

With regard to our investigation of alleged ethical misconduct, we substantiated the allegations against Mr. Ubhi and Ms. Cummings. We did not substantiate the allegations against Mr. Gavin, Secretary Mattis, Ms. Donnelly, Mr. DeMartino, and Mr. Daigle.

Mr. Ubhi

We concluded that Mr. Ubhi committed ethical violations while he worked at DoD during the early stages of the JEDI procurement. He failed to disclose to DoD officials that he had restarted employment negotiations with Amazon in September 2017, and he continued to work on some initial

JEDI tasks while he negotiated and eventually accepted a job with Amazon on October 27, 2017. He also lied three times to Amazon and DoD officials about his negotiations with Amazon for employment.

Mr. Ubhi's lies and his failure to disclose his employment negotiations and job acceptance with Amazon violated the FAR and ethical rules. It also created the appearance of a conflict of interest when the truth was later disclosed that he had worked on JEDI Cloud initiative market research while negotiating for, and then accepting, re-employment with Amazon.

However, we concluded that Mr. Ubhi's brief early involvement in the JEDI Cloud Initiative was not substantial and did not provide any advantage to his prospective employer, Amazon, in the later JEDI Cloud contract competition, which was decided two years after Mr. Ubhi's resignation from the DoD. Although Mr. Ubhi's actions from September through October 2017 was misconduct, his minimal contributions to the JEDI procurement process did not affect the conduct or outcome of the JEDI Cloud source selection.

Mr. Ubhi left the DoD on November 24, 2017, and disciplinary action regarding his misconduct is not available to the DoD. However, we recommend that the DoD Chief Information Officer incorporate a record of Mr. Ubhi's misconduct into his official personnel file. We also recommend that the DoD Chief Information Officer notify the DoD Consolidated Adjudications Facility of Mr. Ubhi's misconduct with regard to any security clearance he may hold or seek in the future.

Mr. Gavin

We concluded that Mr. Gavin did not commit an ethical violation, but should have used better judgment by not attending an April 5, 2018, JEDI Cloud Acquisition strategy meeting as the Navy's representative after he had accepted a job with Amazon and had disqualified himself from Amazon matters.

Mr. Gavin had notified his supervisor in writing that he was exploring employment with Amazon and he disqualified himself from participation in matters related to Amazon. When he was invited to the meeting in April 2018 to discuss the JEDI Acquisition strategy in general, he sought ethics advice about whether he could attend the meeting, which was not about potential cloud contract competitors or their specific capabilities. He did not inform the ethics attorney that, in addition to his negotiations with Amazon and his recusal, he had accepted the job with Amazon. He received ethics advice that he could attend the meeting, despite his recusal, because the meeting did not involve a particular matter such as a contract, or even a solicitation or proposal related to a contract.

Witnesses who attended told us that Mr. Gavin's participation in the meeting was not substantial, that he did not talk about Amazon or its competitors, and that his comments about acquisition strategy did not affect the JEDI Cloud procurement or contract award that happened 18 months after he resigned from the DoD.

We concluded that Mr. Gavin should have used better judgment by not attending the April 5, 2018, JEDI Cloud Acquisition strategy meeting after he had accepted a job with Amazon, to avoid the appearance of a conflict. However, he followed the ethics advice that he could attend the general strategy meeting, and his participation in the meeting did not affect the JEDI Cloud procurement.

On February 27, 2020, we provided Mr. Gavin our tentative conclusions and an opportunity to comment before we issued our final report. On March 5, 2020, Mr. Gavin told us that he agreed with our conclusion, but made a few points he wanted to clarify, none of which related to our conclusion. After considering Mr. Gavin's response, we stand by our findings and conclusions. We also present and address his response more fully in Section IV of this report.

Secretary Mattis

We did not substantiate any of the allegations regarding Secretary Mattis. Secretary Mattis submitted his required Office of Government Ethics Form 278e, "Public Financial Disclosure Reports," at his nomination and throughout his tenure as Secretary of Defense, and did not violate any ethics agreements or ethical obligations when he met with cloud industry executives. We also found no evidence that he had undisclosed financial ties to C5 Capital, a family capital-backed technology investment firm focused on innovating security; or Amazon, as alleged. C5 Capital paid for Secretary Mattis's travel expenses in support of the 6th Duke of Westminster's British wounded warrior hospital initiative, but this reimbursement was not reportable under Office of Government Ethics rules on Secretary Mattis' Public Financial Disclosure Reports when he later became Secretary because he was in a retired military status at the time and was not a Government employee when he worked on the hospital initiative. We found no evidence that Secretary Mattis received income from C5 Capital for his wounded warrior initiative support.

We also found no evidence that Secretary Mattis gave preferential treatment to Amazon by holding meetings or dinners with Amazon leaders. Secretary Mattis and his staff met with a wide variety of industry leaders, including Amazon, Microsoft, Google, Apple, Oracle and others, to educate himself and other key DoD leaders on data security as well as to seek suggestions for recruiting and retaining talent in the DoD. Both Secretary Mattis' and Deputy Secretary Shanahan encouraged DoD leaders to engage and work with industry in a fair, impartial, and transparent manner where there was mutual interest, because this helped industry make informed business decisions that would help the DoD. We found no evidence that his meetings with Amazon differed substantively from similar meetings with Amazon's industry competitors. Secretary Mattis' staff also screened the meeting invitations and sought ethics opinions to avoid potential ethics conflicts.

In sum, we concluded that, contrary to the allegations, Secretary Mattis did not violate any ethics agreements or ethical obligations relating to the cloud adoption initiative or his meetings with industry leaders.

Ms. Donnelly

We did not substantiate any of the allegations regarding Ms. Donnelly. We determined that Ms. Donnelly did not violate any ethical agreements and obligations regarding Office of Government Ethics financial disclosures, did not give preferential treatment to Amazon officials or restrict access to Secretary Mattis for other industry leaders, and did not violate any post-Government employment standards in creating Pallas Advisors and hiring Mr. Daigle.

Mr. DeMartino

We did not substantiate any of the allegations related to Mr. DeMartino. We determined that Mr. DeMartino did not violate his ethics agreements and ethical obligations regarding Amazon or Pallas Advisors, and that he submitted his required Office of Government Ethics financial disclosures.

Mr. Daigle

We concluded Mr. Daigle did not violate any ethical standards by accepting a post Government job with Pallas Advisors, working with Ms. Donnelly and Mr. DeMartino. The complaint implied that Mr. Daigle's accepting a position at Pallas Advisors was somehow improper because he had played a key role in the JEDI Cloud procurement while serving as the DoD Cost Assessment and Program Evaluation Director. Mr. Daigle played an important role in the JEDI process, including executing Deputy Secretary Shanahan's direction to establish a Cloud Executive Steering Group and a cloud adoption program office and helping develop the business case for the procurement. However, Mr. Daigle was not prohibited from accepting a job with Pallas Advisors and working with other former DoD officials simply because he had played a key role in a procurement. We also found no evidence that the JEDI Cloud source selection would have had a financial effect on Mr. Daigle or on Pallas Advisors, which has no business relationships with cloud services providers or any contracts with the DoD.

Ms. Cummings

We concluded that Ms. Cummings, the Principal Deputy Assistant Secretary of Defense for Acquisition and Deputy Assistant Secretary of Defense for Acquisition Enablers, violated her ethical requirements by improperly participating in a particular matter related to the JEDI procurement while owning stock in Microsoft valued between \$15,001 and \$50,000. She had reported on her Office of Government Ethics Form 278e, "Public Financial Disclosure Report," that she owned Microsoft stock. However, she participated and made recommendations in meetings and briefings where participants evaluated options for either making substantive changes to the procurement or continuing as planned with the ongoing proposal evaluations. Ms. Cummings participated even though Microsoft was one of two remaining competitors for the pending JEDI Cloud contract award. Because of her Microsoft stock ownership, she should not have participated in those JEDI procurement activities.

However, we also concluded that Ms. Cummings' participation in the JEDI Cloud procurement did not influence the JEDI contract award decision.

We recommend that the Undersecretary of Defense for Acquisition and Sustainment consider appropriate action for Ms. Cummings' ethics violations, including potential counseling and training. The responsible officials did not respond to the recommendations on the draft version of this report. Therefore, the recommendations are unresolved. We request that the appropriate officials provide comments on this final report.

We also recommend that the DoD Chief Information Officer review the Cloud Computing Program Office's procedures for identifying and mitigating potential conflicts of interest and take appropriate action as a result of this review. The responsible officials did not respond to the recommendations on the draft version of this report. Therefore, the recommendations are unresolved. We request that the appropriate officials provide comments on this final report.

On February 27, 2020, we provided Ms. Cummings and her attorney our tentative conclusions and an opportunity to comment before we issued our final report. On March 11, 2020, Ms. Cummings, through her attorney, responded. We address and present her response in Section IV of this report; however, her response did not cause us to change the report.

Organization of this Report

The following sections of this report provide the detailed results of our review and investigation. Section Two contains a chronology of significant events regarding the JEDI Cloud procurement. Section Three discusses our review of the JEDI Cloud procurement, including the decision to award the contract to a single contractor, the development of the requirements in the Request for Proposals, the source selection process, the improper disclosure of contractor proprietary information after contract award, and White House influence on the source selection. Section Four addresses the specific allegations of ethical misconduct against the DoD officials.

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II. THE JEDI CLOUD PROCUREMENT

The following table provides a chronology of key events related to the JEDI Cloud procurement.

Table 1. Chronology of Significant Events

Date	Event
Dec. 31, 2011	The National Defense Authorization Act for Fiscal Year 2012 requires the DoD Chief Information Officer (CIO) to develop a strategy to transition the DoD into the cloud environment.
Jun. 26, 2012	The DoD CIO issues a memorandum requiring DoD Components to rely on the Defense Information Service Agency (DISA) to acquire cloud computing services.
Jul. 2012	The DoD CIO publishes the DoD Cloud Computing Strategy.
Dec. 15, 2014	The DoD CIO issues a memorandum to allow DoD Components to directly acquire cloud services.
Jan. – Sep. 2017	Secretary Mattis gathers information about DoD strategic challenges related to securing data and sharing information.
Sep. 13, 2017	Deputy Secretary Shanahan issues a memorandum establishing the Cloud Executive Steering Group (CESG) and tasks the Defense Digital Service (DDS) to lead the first phase of a “cloud adoption initiative.”
Sep. 14, 2017	CESG meetings begin.
Sep. 29 – Nov. 8, 2017	The offices of the DoD CIO and Under Secretary of Defense for Acquisition, Technology, and Logistics (USD[AT&L]) host Cloud Focus Sessions with DoD Components and industry information technology experts to share cloud initiatives, efforts, lessons learned, and perspectives on industry and Government trends. ⁶
Oct. 12, 2017 – Jan. 26, 2018	DDS conducts one-on-one meetings with companies interested in sharing information about their products and services. These meetings allow DDS to gather technical information about companies’ commercial cloud service offerings.
Oct. 30, 2017	CESG releases the DoD Cloud Request for Information (RFI), seeking feedback from cloud providers with relevant information on lessons learned, pricing and services, tactical edge, existing cloud presence, and policy and regulatory barriers.
Oct. 31, 2017	Mr. Ubhi disqualifies himself from further participation in the JEDI procurement, citing an ongoing joint business venture with Amazon Web Services (AWS).
Nov. 24, 2017	Mr. Ubhi resigns from the DoD, starts working for AWS on November 27, 2017.
Dec. 22, 2017	The Vice Chairman of the Joint Chiefs of Staff signs the Joint Requirements Oversight Council Memorandum (JROCM) 135-17, which informs acquisition planning and requirements development by providing guidance on the cloud transition and identifying cloud characteristics and elements that are important to the warfighter.

⁶ On February 1, 2018, the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics (USD(AT&L)) was reorganized into two separate offices: the Office of the Under Secretary of Defense for Acquisition and Sustainment and the Office of the Under Secretary of Defense for Research and Engineering. Ms. Ellen Lord, USD(AT&L) became the Under Secretary of Acquisition and Sustainment. We refer to her throughout the report as the Under Secretary for Acquisition and Sustainment.

Jan. 4, 2018	Deputy Secretary Shanahan establishes the Cloud Computing Program Office (CCPO), under the DoD Chief Management Officer (CMO), to be responsible for acquiring the JEDI Cloud.
Jan. 8, 2018	Deputy Secretary Shanahan issues a memorandum directing the CMO to lead the cloud acquisition and to select a Cloud Computing Program Manager (CCPM).
Jan. 11, 2018	Mr. Gavin disqualifies himself from participating in matters related to Amazon because he is “exploring” employment opportunities with Amazon.
Jan. 16, 2018	The CMO appoints a CCPM to lead the Cloud Computing Program Office.
Mar. 5, 2018	USD(A&S) issues an Acquisition Decision Memorandum authorizing the PM to tailor the acquisition process to the circumstances of the JEDI Cloud procurement.
Mar. 7, 2018	The DoD holds a JEDI Cloud Industry Day to encourage companies’ participation and involvement in the acquisition process.
Mar. 7, 2018	The Washington Headquarters Services (WHS), Acquisition Directorate releases the first JEDI Cloud draft Request for Proposals.
Mar. 26, 2018	Less Government, a non-profit company, places a full-page advertisement in the New York Post stating "President Trump: Your Defense Department is set to award a no-bid, ten-year contract for all its IT infrastructure to Administration-enemy Jeff Bezos' Amazon."
Mar. 27, 2018	The Cloud Computing Program Office completes the “Market Research Report,” which summarizes market research activities and findings that the Defense Digital Service (DDS) completed on behalf of the CESG. The report is used to inform the JEDI acquisition strategy and solicitation package.
Apr. 2, 2018	Mr. Gavin accepts a job with AWS.
Apr. 5, 2018	Mr. Gavin attends a meeting on the JEDI Cloud acquisition strategy.
Apr. 11, 2018	The Cloud Computing Program Office completes, and the CMO approves, the JEDI Cloud “Business Case Analysis.”
Apr. 16, 2018	The Cloud Computing Program Office releases a revised, second draft JEDI Cloud RFP and answers to comments and questions from industry regarding the first draft RFP.
Jun. 22, 2018	Deputy Secretary Shanahan directs the new DoD CIO, Mr. Dana Deasy, to lead all DoD enterprise cloud initiatives, including the JEDI Cloud procurement.
Jun. 28, 2018	The Director of Washington Headquarters Services (WHS) Acquisition Directorate (AD), the Procuring Contracting Officer (PCO) and the CCPM, and sign the Acquisition Plan addressing the technical, business, management, and other significant considerations that will control the acquisition.
Jul. 17, 2018	The PCO, from the WHS/AD, signs the “Rationale for Using a Single-Award Indefinite Delivery/Indefinite Quantity Contract” memorandum, as required by the Federal Acquisition Regulation (FAR), to document her rationale for awarding the contract to a single contractor.
Jul. 18, 2018	The DoD CIO approves the JEDI Cloud Cyber Security Plan.
Jul. 19, 2018	The USD(A&S) approves the JEDI Cloud Acquisition Strategy that describes how the CCPO will manage the acquisition of the JEDI Cloud.
Jul. 19, 2018	The USD(A&S) signs the Determination and Findings (D&F) memorandum justifying DoD's decision to award the JEDI Cloud contract to a single contractor.
Jul. 19, 2018	The USD(A&S) issues the Acquisition Decision Memorandum that authorizes the CCPM to release the JEDI Cloud RFP.
Jul. 23, 2018	The Source Selection Authority (SSA) approves and signs the Source Selection Plan. The plan identifies each source selection team member by position and provides guidance for their evaluation of the submitted proposals.

Jul. 23, 2018	The PCO completes an investigation into whether Mr. Ubhi had a conflict of interest or relationship that prevented him from acting impartially in the performance of duties related to AWS. The PCO concludes that Mr. Ubhi participated only in commercial cloud services market research activities, “promptly recused himself” from involvement in the cloud initiative once AWS “expressed an interest in purchasing a business that Mr. Ubhi owned,” and did not negatively impact the procurement.
Jul. 26, 2018	The DoD releases the final JEDI Cloud RFP with the statement of objectives (SOO) and answers to comments and questions from industry regarding the second draft RFP.
Aug. 6, 2018	Oracle files a pre-award protest with the Government Accountability Office (GAO) arguing that the DoD’s decision to award the JEDI Cloud to a single contractor is unlawful and irrational; the DoD structured the JEDI Cloud RFP to restrict competition. Oracle files a revised protest on September 6, 2018, that also argues that the DoD failed to properly consider conflicts of interest, among other assertions.
Aug. 14, 2018	(FOUO) [REDACTED] The DoD does not accept this offer.
Aug. 23, 2018 – Oct. 9, 2018	The DoD amends the RFP four times (August 23, August 31, September 24, and October 9) to refine and clarify the requirements.
Oct. 10, 2018	IBM files a pre-award protest with GAO and makes assertions similar to those made by Oracle in its GAO protest.
Oct. 12, 2018	The DoD receives seven contractor proposals in response to the JEDI Cloud RFP.
Oct. 22, 2018	U.S. Representatives Womack and Cole write to the DoD OIG to express their concerns about the JEDI Cloud procurement.
Nov. 14, 2018	The GAO denies Oracle’s protest.
Dec. 6, 2018	Oracle files a pre-award protest in the U.S. Court of Federal Claims.
Dec. 11, 2018	The GAO dismisses IBM’s protest without review because the matters protested are before the U.S. Court of Federal Claims.
Dec. 18, 2018	Deputy Secretary Shanahan publishes “DoD Cloud Strategy” describing key cloud computing objectives, challenges, and strategic approaches for the DoD.
Dec. 31, 2018	Secretary Mattis resigns as the Secretary of Defense.
Feb. 12, 2019	AWS reports to the PCO that Mr. Ubhi may have made false statements related to his disqualification and subsequent departure from the DoD. The PCO reopens the investigation that concluded on July 23, 2018.
Mar. 21, 2019	The DoD OIG receives a complaint from Oracle alleging that DoD officials involved in the JEDI procurement had “improper commercial and financial relationships” with Amazon.
Apr. 9, 2019	The PCO concludes that “none of the information [about Ubhi and Gavin] leads me to conclude that AWS” received an unfair competitive advantage and “no OCI [organizational conflict of interest] exists.” ⁷ The PCO finds that Mr. Ubhi did not have access to “competitively useful” information, his participation in “early stages” of acquisition planning did not introduce bias that favored Amazon. The PCO concludes that Mr. Ubhi’s actions did not negatively impact the JEDI Cloud procurement, and that Mr. Gavin’s participation in the April 5,

⁷ We include information in this report that was obtained from sources marked “Source Selection Information – See FAR 2.101 and 3.104.” This information is protected against unauthorized disclosure by Federal law and regulation. We identify this information with the marking “(FOUO-SSI).”

	2018 meeting on the acquisition strategy did not negatively impact the JEDI Cloud procurement.
Apr. 10, 2019	(FOUO-SSI) The Source Selection officials rate [REDACTED]
May 13, 2019	The DoD amends the RFP for a fifth time to include additional FAR clauses, clarify terms and pricing requirements, and update instructions.
May 20, 2019	The DoD OIG receives a letter from Oracle supplementing its March 21, 2019 complaint. The letter claims that DoD officials had financial interests that conflicted with duties related to the JEDI Cloud procurement, failed to recuse themselves, and made false statements.
Jun. 12, 2019	The DoD OIG receives a second supplement to Oracle's March 21, 2019 complaint. The letter states that two DoD officials involved in the JEDI Cloud procurement left the DoD, formed a lobbying firm, and hired a third official who was involved with JEDI.
Jul. 10, 2019	The DoD CIO briefs Acting White House Chief of Staff Mulvaney on the JEDI Cloud initiative and addresses criticisms about the planned procurement.
Jul. 18, 2019	The DoD CIO presents the same briefing to Deputy National Security Advisor Charles Kupperman.
Jul. 18, 2019	CNBC reports that President Trump stated he received "tremendous complaints" and would "take a close look at" the JEDI Cloud procurement.
Jul. 19, 2019	The U.S. Court of Federal Claims enters a judgment in favor of the DoD stating that Oracle was not excluded unfairly even if the procurement was flawed because Oracle admitted it could not meet one of the RFP's gate criteria requirements.
Jul. 23, 2019	The U.S. Senate confirms Mark Esper as the Secretary of Defense.
Jul. 23, 2019	The DoD CIO meets with Secretary Esper to discuss the JEDI Cloud program.
Jul. 24, 2019	Secretary Esper announces he will review the JEDI Cloud procurement.
Jul. 29, 2019	The DoD CIO, Mr. Deasy, calls Mr. Chris Liddell, Assistant to the President and Deputy Chief of Staff for Policy Coordination, and asks how to get correct information about the JEDI Cloud procurement to President Trump. Mr. Liddell tells Mr. Deasy that President Trump was not engaging anyone on the topic.
Aug. 14, 2019	Ms. Cummings contacts the DoD Deputy CIO, Mr. Peter Ranks, and requests an update on the JEDI Cloud procurement so she could update Ms. Lord.
Aug. 21, 2019	The DoD CIO hosts Mr. Liddell for briefings at the Joint Artificial Intelligence Center. The Deputy CIO for Information Enterprise facilitates an "Enterprise Cloud Discussion."
Aug. 23, 2019	The DoD CIO begins a series of four "education sessions" that inform Secretary Esper on DoD's cloud strategy, requirements, and the JEDI Cloud RFP, that conclude on September 16, 2019.
Aug. 26, 2019	Oracle appeals the U.S. Court of Federal Claims' judgment to the U.S. Court of Appeals for the Federal Circuit.
Aug. 28, 2019	The DoD amends the RFP for a sixth time to include additional FAR clauses and updated instructions.
Sep. 4, 2019	The DoD OIG receives a third supplement to Oracle's March 21, 2019 complaint. The letter provides additional information about the alleged "commercial relationships" between Amazon and one of the DoD officials named in the March 21, 2019 complaint.

Sep. 13 – 26, 2019	Ms. Cummings participates in meetings with members of the CCPO, OCIO, and other DoD officials and reviews options for either proceeding with the source selection or making adjustments to the RFP or acquisition strategy.
Sep. 26, 2019	Secretary Esper hosts Members of Congress for a meeting to hear their concerns with the JEDI Cloud contract.
Sep. 27, 2019	A WHS assistant general counsel (WHS AGC 1) reviews Ms. Cummings' Office of Government Ethics Form 278e Public Financial Disclosure Report (OGE 278e) and notes that she owns between \$15,001 and \$50,000 of Microsoft stock. An attorney in the DoD Standards of Conduct Office (SOCO) tells Ms. Cummings that she must disqualify herself from participating in matters related to Microsoft. Ms. Cummings sends a disqualification letter to her supervisor.
Sep. 27, 2019	The Source Selection Evaluation Board (SSEB) Chairperson completes the review of the evaluation boards' ratings for Factors 2-8. The SSEB Chairperson completes, but does not sign, the SSEB Executive Summary report.
Sep. 29, 2019	The Price Evaluation Board (PEB) Chairperson completes the Final PEB report, documenting the findings and determinations related to Factor 9, Price.
Sep. 30, 2019	The SSA signs the final Source Selection Plan, identifying the final Source Selection Team (SST) members by position.
Sep. 30, 2019	The PEB Chairperson signs the Final PEB report. The SSEB and PEB brief the Source Selection Advisory Council (SSAC) and the SSA on evaluation results.
Oct. 3, 2019	The SSEB Chairperson signs the SSEB Executive Summary report. The SSAC signs its report, recommending that the SSA select Microsoft for award.
Oct. 3, 2019	The DoD OIG receives an allegation that Ms. Stacy Cummings, Principal Deputy Assistant Secretary of Defense for Acquisition Enablers, improperly participated in the JEDI Cloud procurement while holding a financial interest in Microsoft.
Oct. 7, 2019	Secretary Esper recuses himself from decisions related to the JEDI Cloud acquisition because his son works for IBM, which had previously submitted a proposal in response to the RFP but had been eliminated from the competition.
Oct. 7, 2019	Following Secretary Esper's JEDI review and recusal from JEDI-related decision-making, Deputy Secretary Norquist decides that the procurement would continue as planned, using the current Request for Proposals.
Oct. 11, 2019	The WHS Assistant General Counsel AGC 2 updated the list of enclosures in the draft letter to AWS to include the unredacted TEB Reports for Factors 2-8, in addition to redacted SSDD, SSAC, SSEB, PEB reports, as part of the post-award debriefing for AWS.
Oct. 16, 2019	Deputy Secretary Norquist asks the DoD OIG whether the information in its investigation, to date, should prevent the DoD from moving ahead with a contract award, and the DoD OIG concludes that its investigation should not prevent the award of the contract.
Oct. 17, 2019	The DoD OIG provides Deputy Secretary Norquist a statement that reads, in part, "To date, we have not found evidence that we believe would prevent the DoD from making a decision about the award of the contract."
Oct. 17, 2019	The SSA reviews the SSEB, PEB, and SSAC reports; makes the decision to award the JEDI contract to Microsoft; and signs the Source Selection Decision Document.
Oct. 18, 2019	The PCO completes an assessment to determine whether a violation or potential violation of procurement integrity impacted the pending source selection. The PCO concludes there was no impact on the source selection and that Ms. Cummings "possibly" violated Title 18, U.S.C., Section 208, "Acts Affecting a Personal Financial Interest."

Oct. 21-24, 2019	The Contract Specialist and the WHS AGC 2 disagree over how much source selection and proprietary information should be redacted from the SSDD, SSAC, SSEB, and PEB Reports.
Oct. 22, 2019	The DoD announces that Secretary Esper is recused from “participating in any decision making” regarding the JEDI Cloud acquisition.
Oct. 24, 2019	The Contract Specialist expresses concern to the PCO that the redactions are insufficient and would allow too much information to be released in violation of FAR 15.506(e). The PCO instructs the Contract Specialist to defer to the WHS AGC 2.
Oct. 24, 2019	The USD(A&S), Ms. Lord, authorizes the CCPO to proceed with the “process for award in accordance with the solicitation.”
Oct. 25, 2019	The DoD awards the JEDI Cloud contract to Microsoft Corporation and issues a public announcement.
Oct. 25, 2019	The PCO notifies Microsoft through e-mail that it had been awarded the JEDI Cloud contract. Within an hour of awarding the contract, the Contract Specialist, using the PCO’s computer, notifies AWS through e-mail that its proposal was not selected for award and provides AWS with a written post-award debriefing, which includes source selection and proprietary Microsoft information.
Oct. 26, 2019	CNN publishes an excerpt from a book, alleging that President Trump told Secretary Mattis in the summer of 2018 to “screw Amazon” out of a chance to bid on the JEDI Cloud contract.
Oct. 29, 2019	AWS submits 265 post-award enhanced debriefing questions to the PCO, including detailed questions about Microsoft’s proposal.
Oct. 29, 2019	The PCO and CCPM realize that AWS received source selection and proprietary Microsoft information as part of the written debriefing. The CCPM notifies Microsoft and AWS of the disclosure.
Nov. 21, 2019	The United States Attorney for the Eastern District of Virginia (EDVA) declines prosecution of Mr. Ubhi. When asked about the reasons for the declination, it advises that it does not comment publicly on prosecutorial decisions.
Dec. 9, 2019	AWS files a bid protest in the U.S. Court of Federal Claims asserting egregious errors in the source selection evaluation and improper pressure from the President of the United States.
Feb. 13, 2020	The U.S. Court of Federal Claims grants Amazon’s request for a preliminary injunction, stopping the DoD from proceeding with JEDI Cloud contract activities until further order of the court.
Mar. 2, 2019	The EDVA declines prosecution of Ms. Cummings. When asked about the reasons for the declination, it advises that it does not comment publicly on prosecutorial decisions.

The following sections provide more detailed information on DoD cloud computing, the JEDI contract award, and the information contained in the Chronology.

Background on DoD Cloud Computing

Cloud computing is a subscription-based service that provides on-demand storage, networking, servers, software applications, and other computing services. It allows users to store and access data and programs over the internet rather than a computer hard drive. Users can access information from anywhere at any time, effectively removing the need for the user to be in the same physical location as the hardware that stores the data.

For the JEDI Cloud contract, cloud computing includes the Infrastructure as a Service (IaaS) and Platform as a Service (PaaS) cloud service models. According to the National Institute of Standards and Technology (NIST) Special Publication (SP) 500-322, IaaS will allow the cloud service customer, such as the DoD, to control the operating systems, storage, and deployed applications, while the cloud contractor will provide networking, storage, servers, and other computing resources (infrastructure). PaaS will allow the DoD to control the deployed applications, while the cloud contractor will provide the operating systems, networking, storage, servers, and other computing resources (platform).⁸

Enacted on December 31, 2011, Public Law 112-81, “The National Defense Authorization Act for Fiscal Year 2012,” required the DoD Chief Information Officer (CIO) to develop a strategy to transition the DoD into a cloud environment and migrate its data and services from DoD-owned and operated data centers to cloud computing services available in the private sector.

On June 26, 2012, the DoD CIO issued a memorandum that required DoD Components to rely on DISA to acquire cloud computing services. In July 2012, the DoD issued the first DoD Cloud Computing Strategy, outlining a path to transition the DoD from duplicative, cumbersome, application silos to an enterprise cloud environment. The strategy described the enterprise cloud environment as a key component to enable the DoD to achieve the goals of a robust and resilient enterprise. The strategy also noted the potential benefits of cloud computing, identified challenges to adopting a cloud environment, and detailed a strategy to achieve DoD’s information technology objectives through cloud computing.

On December 15, 2014, the Acting DoD CIO issued a memorandum, “Updated Guidance on the Acquisition and Use of Commercial Cloud Computing Services,” to allow DoD Components to directly acquire cloud services, removing the requirement to use DISA as a broker for those services. According to the DoD Chief Management Officer (CMO), since the issuance of this memorandum, DoD Components have acquired over 500 cloud efforts, each procured, managed, and secured individually.⁹

DoD’s Adoption of Enterprise Cloud Computing Technology

Secretary Mattis told us that he learned about DoD’s strategic challenges in the areas of information sharing and data security early in his tenure as the Secretary of Defense from intelligence briefings, industry association executives, and the leaders of a “large number” of companies. He said he was concerned about the proliferation of DoD systems and databases that were not consistently secured and could not share information. Secretary Mattis also told us that he learned that the Central Intelligence Agency (CIA) had moved their systems and data to the cloud to address similar concerns. In addition, he said that he spoke with industry leaders to learn more about cloud services and their ability to protect information. Secretary Mattis said that after the DoD’s data security and information sharing problem was defined at the strategic level, he directed Deputy Secretary of Defense Patrick Shanahan to “solve the problem.”¹⁰

⁸ NIST SP 500-322, Evaluation of Cloud Computing Services Based on NIST SP 800-145.

⁹ The DoD CMO identified over 500 cloud efforts as of May 2018.

¹⁰ Mr. Shanahan was the Deputy Secretary of Defense from July 19, 2017, through January 1, 2019, when he became the Acting Secretary of Defense. He resigned from his position on June 23, 2019. We refer to him as Deputy Secretary of Defense Shanahan throughout this report.

On September 13, 2017, Deputy Secretary Shanahan signed the “Accelerating Enterprise Cloud Adoption” memorandum directing DoD senior leaders to accelerate the adoption of enterprise cloud computing technologies and establishing the Cloud Executive Steering Group (CESG). The CESG’s mission was to develop and oversee the execution of a strategy to promote the adoption of commercial cloud services across the DoD. Ms. Ellen Lord, the Under Secretary of Defense for Acquisition and Sustainment (USD[A&S]), chaired the CESG. Its members included the Cost Assessment and Program Evaluation (CAPE) Director, the Strategic Capabilities Office Director, the Defense Innovation Unit Experimental Managing Partner, the Defense Innovation Board Executive Director, and the Defense Digital Service (DDS) Director. Deputy Secretary Shanahan’s memorandum also contained several action items, including establishing a program office, identifying a contracting activity, drafting an acquisition plan, and awarding a contract. The memorandum tasked the DDS Director to “use a tailored acquisition process to acquire a modern enterprise cloud services solution that can support unclassified, secret, and top secret information.”

Ms. Lord chaired the CESG and provided a bi-weekly update to Deputy Secretary Shanahan on the status and progress of the DoD cloud adoption initiative beginning in late September 2017. The Defense Innovation Board Executive Director, a CESG member, told us that the CESG had no decision-making authority. The Executive Director further described it as a forum to debate ideas and determine the best approach to execute the Deputy Secretary’s directives. The CESG meetings did not follow a set schedule, but they occurred regularly during late 2017 and early 2018. The CESG discussed, among other issues, how to bridge the needs of DoD’s business operations with the needs of the warfighter at the tactical edge; the tradeoffs among private, hybrid, and commercial clouds; and whether there should be one or multiple Indefinite Delivery/Indefinite Quantity (ID/IQ) contract awards.¹¹

Ms. Lord told us that the single or multiple award question was an “enormous topic of conversation,” the subject of a “huge amount of debate,” and she was still not decided in early January 2018. Mr. Robert Daigle, the CAPE Director, told us that while the CESG held formal meetings, he and other DoD officials met separately with Deputy Secretary Shanahan to make key decisions regarding the JEDI Cloud procurement. He said the officials who typically attended those meetings were Mr. John Gibson, DoD CMO; Mr. Chris Lynch, DDS Director; the DDS General Counsel; and the DDS Deputy Director.

JEDI Cloud Market Research

In September 2017, DDS officials initiated market research efforts for the JEDI Cloud procurement.¹² The DDS Director used Mr. Deap Ubhi, who was a DDS Product Manager, to help conduct market research, along with others. DDS officials, including Mr. Ubhi, held “Cloud Focus Sessions” and one-on-one meetings with industry leaders. DDS officials held 11 Cloud Focus Sessions between September 29 and November 8, 2017. At these sessions, the DDS officials heard from the Army, Navy, Air Force, Marine Corps and other DoD Components, as well as industry information technology experts, about lessons learned, industry trends, and current cloud computing initiatives.

¹¹ “Tactical edge” is defined as environments covering the full range of military operations with the ability to operate in austere and connectivity-deprived environments. For example, tactical edge may include forward operating bases, aircraft carriers, and dismounted infantry patrols.

¹² Market research means collecting and analyzing information about capabilities within the market to satisfy agency needs.

The information obtained during these sessions suggested to DoD officials that enterprise solutions were critical to achieving security, economies of scale, advanced analytics, communication, and collaboration in the cloud. In an October 5, 2017, Cloud Focus Session with DDS officials, Victor Gavin, Deputy Assistant Secretary of the Navy for Command, Control, Communications, Computers, Intelligence, Information Operations and Space, briefed the Navy's lessons learned with cloud computing.

(~~FOUO SSI~~) Between October 12, 2017 and January 26, 2018, the DDS held eight one-on-one meetings with cloud service providers, resellers, and other types of contractors. Mr. Ubhi participated in several of these meetings, during which DDS heard from Amazon Web Services (AWS), Microsoft, and other commercial cloud providers [REDACTED]

[REDACTED] The meetings followed a specific format where each contractor was asked eight previously-vetted, standardized questions about their technical capabilities, information security practices, hardware architecture, and other areas that were designed to inform the DoD on its efforts to develop requirements for the JEDI contract and plan for its acquisition.

(~~FOUO SSI~~) The CESG issued the Request for Information (RFI) to industry on October 30, 2017. The RFI asked for industry's input on how to best approach and structure the planned solicitation to acquire a modern enterprise cloud service solution that could support unclassified, secret, and top secret information in Continental United States and Outside of the Continental United States environments. The DoD RFI targeted feedback from potential cloud providers and other contractors related to lessons learned, pricing and services, tactical edge, existing cloud presence, and policy or regulation barriers. [REDACTED]

On October 31, 2017, Mr. Ubhi disqualified himself from further participation in the JEDI procurement, citing an ongoing joint business venture with AWS. He told the DDS General Counsel that AWS was interested in acquiring his start-up company, "Tablehero." DDS removed Mr. Ubhi's access to JEDI documents and collaborative electronic work environments on the same day. Mr. Ubhi resigned from the DoD on November 24, 2017, and began working at AWS on November 27, 2017. In February 2019, AWS informed the JEDI Cloud Procuring Contracting Officer (PCO) that Mr. Ubhi had misrepresented his reasons for leaving the DoD in 2017. We present facts and analysis related to misconduct allegations against Mr. Ubhi in Section IV of this report.

In the fall of 2017, DoD officials met with the Office of the Director of National Intelligence and CIA officials to learn about the Intelligence Community's experiences with acquiring and using an enterprise cloud.¹³ The CIA shared with the DoD its rationale for awarding the Commercial Cloud Services (C2S) as a single award, ID/IQ contract, and its lessons learned from using C2S.¹⁴ C2S is a commercial cloud that the Intelligence Community uses to compute, store, and secure data at the Top

¹³ In 2013, the CIA contracted for commercial cloud services on behalf of the Intelligence Community and its Commercial Cloud Services contract became a main cloud services contract vehicle under the Intelligence Community's Information Technology Enterprise Initiative.

¹⁴ All the meetings between DoD and CIA officials occurred before starting the acquisition of the Intelligence Community's follow on cloud, the Commercial Cloud Enterprise.

Secret classification level. A DDS official that attended the meetings told us that in 2013, the CIA did not have a technical workforce with a foundational understanding of cloud computing, configuration, and security. He stated that the CIA determined that the complexity of integrating and securing multiple clouds from multiple contractors would be more difficult than securing a single cloud because of the CIA's lack of expertise. Additionally, he explained that to move to the cloud quickly and efficiently, the CIA recognized that under a single-award ID/IQ contract, task orders could be awarded faster because the agency did not have to compete each new request for services.

Establishing the JEDI Cloud Requirements

The DoD's Joint Requirements Oversight Council approves capabilities and operational performance that are required for warfighters to fulfill their mission. On December 22, 2017, the Vice Chairman of the Joint Chiefs of Staff signed the Joint Requirements Oversight Council Memorandum (JROCM) 135-17. The memorandum helped inform acquisition planning and requirements development by providing guidance on the cloud transition and identifying cloud characteristics and elements that are important to warfighting missions. The JROCM emphasized the need for resiliency and explained the importance of having high availability, redundancy, and failover of the cloud computing and storage infrastructures. It also directed the CESG to specify the standards it will require for data protection within the cloud.

In a January 4, 2018 memorandum, "Establishment of DoD Cloud Program Office within the Office of the Deputy Chief Management Officer," Deputy Secretary Shanahan established a program office, reporting to the CMO, with the responsibility to acquire the JEDI Cloud. In this memorandum, Deputy Secretary Shanahan tasked the DDS Director to advise the cloud Program Manager (PM) on how to ensure modern technology strategies and practices guided the effort.¹⁵

JEDI Cloud Program Management and Governance

On January 8, 2018, Deputy Secretary Shanahan issued another memorandum, "Accelerating Enterprise Cloud Adoption Update," tasking the CMO, in partnership with CAPE, Office of the CIO, and the DDS, to "take the lead" on the JEDI Cloud procurement. This memorandum tasked the CMO to establish and select a Cloud Computing PM (CCPM) that would report to the CMO. Subsequently, on January 16, 2018, Mr. Gibson appointed a PM to lead the Cloud Computing Program Office (CCPO).¹⁶

On January 11, 2018, Mr. Gavin disqualified himself from participating in matters related to AWS because he was "exploring" employment opportunities with Amazon. We present facts and analysis related to misconduct allegations against Mr. Gavin in Section IV of this report.

As the USD(A&S), Ms. Lord serves as the Defense Acquisition Executive (DAE). The DAE supervises the Defense Acquisition System and is the Milestone Decision Authority for Major Defense Acquisition programs.

¹⁵ The memorandum stated that the program office would have the name Central Cloud Computing Program Office. The name was then changed to Cloud Computing Program Office, which is the name we use in this report.

¹⁶ (FOUO) The DoD CMO appointed a military officer as the first Cloud Computing Program Manager. In October 2018, then-DDS General Counsel ██████████ became the Cloud Computing Program manager, leading the Cloud Computing Program Office.

On March 5, 2018, Ms. Lord issued an “Acquisition Decision Memorandum” (ADM) to “provide direction regarding the tailoring of the defense acquisition process for the JEDI Cloud program.” In the memorandum, Ms. Lord retained and did not delegate major decision making authority for the JEDI Cloud program. She recognized the CMO as the approval authority for the Business Case Analysis (BCA), but she retained authority to release the Request for Proposals (RFP) and authorize the award of the contract. Ms. Lord also directed the CCPM to “execute a tailored acquisition process to effectively deliver a modern enterprise cloud services solution as defined in the relevant ADM(s) and approved acquisition strategy.” DoD acquisition policy states that acquisition officials should “tailor” the structure, procedures, strategies, and oversight of an acquisition program as much as possible to the unique product and circumstances of the program.¹⁷ The policy states that acquisition officials have “full latitude to tailor programs in the most effective and efficient structure possible, to include eliminating phases and combining or eliminating milestones and decision points, unless constrained by statute.”

JEDI Cloud Draft Request for Proposals and Market Research Report

On March 7, 2018, the DoD held the JEDI Cloud Industry Day as a market research activity to introduce the JEDI Cloud, explain how it would be executed, and encourage early industry participation in the acquisition process. Market research techniques often include contacting knowledgeable individuals in Government and industry and holding pre-solicitation conferences to involve potential contractors. On Industry Day, the PCO briefed the scope of the acquisition, acquisition strategy, contracting approach, key elements of the draft solicitation package, source selection process, and provided a tentative timeline for the procurement.

Also on March 7, 2018, the Washington Headquarters Services (WHS), Acquisition Directorate released a draft RFP to over 900 participants who attended Industry Day. The draft RFP stated that the DoD anticipated awarding a single ID/IQ contract for the JEDI Cloud. An ID/IQ is a type of contract used to acquire supplies or services when the exact times or exact quantities of future supplies or services are not known at the time of contract award. “Customers” in the DoD would place orders under the contract when they need the services. The CCPO subsequently responded to over 1,000 questions and comments related to the draft RFP.

The CCPO completed a market research report on March 27, 2018, summarizing market research activities and findings that the DDS completed on behalf of the CESG. The information in this report was used to inform the JEDI acquisition strategy and solicitation package. The market research report concluded that:

- (FOUO-SSI) [REDACTED]
- (FOUO-SSI) [REDACTED]
- (FOUO-SSI) [REDACTED]

¹⁷ DoD Instruction 5000.02T, “Operation of the Defense Acquisition System,” January 7, 2015, Incorporating Change 4, August 31, 2018.

- (FOUO-SSI) [REDACTED]

On March 28, 2018, the publication *Federal Computer Week* issued a story about a full page advertisement that Less Government, a non-profit organization, had placed in the *New York Post*.¹⁸ The first line in the advertisement stated, “President Trump: Your Defense Department is set to award a no-bid, ten-year contract for all its IT infrastructure to Administration-enemy Jeff Bezos’ Amazon.” The advertisement featured a picture of Secretary Mattis walking with and speaking to Mr. Bezos and stated that contractors had complained about “DoD’s plans to make a single award and concerns that requirements are being written in a way that gives Amazon the inside track.” It also stated that President Trump “is a frequent critic of Bezos, who also owns *The Washington Post*.”¹⁹

Other media stories throughout 2018 contained reports that members of industry or the U.S. Congress had questions about or were dissatisfied with the JEDI Cloud RFP. They also reported on President Trump’s criticisms of Mr. Bezos, *The Washington Post*, and Amazon.

On April 2, 2018, Mr. Gavin accepted a job with AWS as Principal, Federal Technology and Business Development. On April 5, 2018, a Navy attorney advised that Mr. Gavin could accept an invitation to attend a meeting on the JEDI Cloud acquisition strategy that was scheduled for later that day, because, according to the attorney’s analysis, the acquisition strategy was not a particular matter that involved Amazon. Mr. Gavin attended the meeting. We present facts and analysis related to these events in Section IV of this report.

JEDI Cloud Business Case Analysis and Updated Draft Request for Proposals

On April 11, 2018, Mr. Gibson approved the BCA for the JEDI program. A BCA is a document that aids decision making by using a structured methodology to evaluate the expected benefits, risks, and financial and non-financial impacts of alternative solutions to a problem. The “problem” identified in the JEDI BCA was defined in brief, as a “computing and storage infrastructure [that] critically fails to meet DoD mission and business needs.”

The BCA included an analysis of the status quo and four alternative solutions, and assessed how well each solution would meet the following eight objectives: 1) available and resilient services; 2) global accessibility; 3) centralized management and distributed control; 4) ease of use; 5) commercial parity; 6) modern and elastic computing, storage, and network infrastructure; 7) fortified security; and 8) advanced data analytics. Based on the objectives of the program, technical analysis of the alternatives, and market research, the BCA recommended acquiring the JEDI Cloud from a single contractor. We present facts and analysis related to the BCA events in Section III of this report.

The CCPM released a second draft RFP on April 16, 2018. The second draft clarified some content of the first draft RFP, including small business participation, scope of the required Cloud Support Package, price scenarios, and definitions. The CCPO also released answers to over 1,000 comments and questions from industry regarding the first draft RFP. On July 26, 2018, the CCPO released the answers to over 300 additional comments and questions regarding the second draft RFP. The purpose of the draft RFPs was to help industry understand the JEDI Cloud requirements and offer comments and

¹⁸ “Tabloid Ad Tries to Focus Trump on DoD’s JEDI Cloud Contract,” *Federal Computer Week*, March 28, 2018.

¹⁹ A link to the advertisement took us to a web page that indicated the advertisement had been taken down.

questions. The CCPO then used the input from industry to help refine and clarify the requirements for the final RFP.

JEDI Cloud Acquisition Strategy and Key Acquisition Milestones

On June 22, 2018, Deputy Secretary Shanahan signed a memorandum, “DoD Cloud Update,” in which he tasked the new DoD CIO, Mr. Dana Deasy, to lead all DoD enterprise cloud initiatives, including the JEDI Cloud procurement.

On June 28, 2018, the Director of Washington Headquarters Service (WHS) Acquisition Directorate, the CCPM, and the PCO sign the Acquisition Plan addressing the technical, business, management, and other significant considerations that would control the JEDI Cloud procurement. The Acquisition Plan included a statement of need; the established cost goals for the procurement and the rationale supporting them; the technical, price, and schedule risks and plans to reduce risk; and a plan of action for sources, full and open competition, contract type selection, and security considerations, among other considerations.

On July 17, 2018, the PCO signed a “Memorandum for the Contracting Officer File, Rationale for Single-Award Indefinite Delivery/Indefinite Quantity (ID/IQ) Contract,” to document her rationale for using a single award ID/IQ contract. The PCO determined that three conditions existed in the JEDI Cloud procurement, described in the Federal Acquisition Regulation (FAR) Part 16, “Types of Contracts,” Subpart 16.5, “Indefinite-Delivery Contracts,” Section 16.504, “Indefinite-quantity contracts,” Subsection 16.504(c)(1), “Planning the Acquisition,” that prohibited the use of a multiple award approach and necessitated a single award approach.²⁰ First, according to this memorandum, more favorable terms and conditions, including pricing, would be provided with a single award. Second, the expected cost of administering multiple contracts outweighed the expected benefits of making multiple awards. Third, multiple awards would not be in the best interests of the Government.²¹ We present facts and analysis related to the PCO’s determination in Section III of this report.

On July 18, 2018, Mr. Deasy approved the JEDI Cloud Cyber Security Plan. This plan detailed the security requirements and standards that applied to the JEDI Cloud, including DoD Information Network, NIST, and National Security Agency policies. The plan also stated that the JEDI Cloud must comply with the DoD Cloud Computing Security Requirements Guide (CC SRG) which outlined the security model for cloud computing, along with the security controls and requirements necessary for using cloud-based solutions, including FedRAMP authorization requirements.²² Finally, the plan outlined the geographic, physical, logical, network, and cybersecurity defense requirements for the JEDI Cloud.

On July 19, 2018, Ms. Lord signed the JEDI Cloud Acquisition Strategy that established how the CCPO would manage the acquisition of the JEDI Cloud. The strategy stated that the acquisition was

²⁰ This report references the Federal Acquisition Regulation in effect on January 24, 2018, (Federal Acquisition Circular 2005-97) and Defense Federal Acquisition Regulation Supplement in effect on May 4, 2018 (DFARS Publication Notice 20180504) that are applicable to the JEDI Cloud procurement.

²¹ FAR 16.504(c)(1)(ii)(B).

²² FedRAMP promotes the adoption of secure cloud services across the Federal Government by providing a standardized approach to security and risk assessment. FedRAMP security requirements require Federal Agencies to protect federal information that is collected, maintained, processed, disseminated, or disposed of by cloud service offerings.

based on four foundational documents: 1) the JROCM 135-17 that outlined warfighter needs; 2) the BCA that outlined the problem and potential solutions to the problem; 3) the Statement of Objectives that outlined the performance requirements; and 4) the Cyber Security Plan that outlined the security requirements. The strategy stated that the JEDI Cloud would use a heavily tailored acquisition process to acquire a modern, secure, commercial, enterprise cloud services solution that can support unclassified, secret, and top secret requirements from the United States to the tactical edge in support of warfighting and business operations. The Acquisition Strategy detailed the program schedule, program structure and management, roles and responsibilities, contracting approach, and source selection approach.²³

On July 19, 2018, Ms. Lord also signed a Determination and Findings (D&F), “Authority to Award a Task Order Contract to a Single Source,” that documented her rationale for authorizing the award of a contract valued at up to \$10 billion to a single source. Section 2304a, title 10, United States Code (10 U.S.C. § 2304a), requires the head of the agency to determine in writing that one of four exceptions to the preference for multiple awards applies to award an ID/IQ task order contract estimated to exceed \$112 million to a single source.²⁴ The D&F cited the exception that the JEDI Cloud contract would provide only firm-fixed-price task orders or delivery orders for services for which prices are established in the contract for the specific tasks to be performed. Ms. Lord determined that the cloud service offerings would be priced by catalogs resulting from full and open competition, enabling competitive forces to drive all aspects of the firm-fixed pricing. She further explained that the catalogs would be incorporated into the contract at award and cover the full potential 10 years. Ms. Lord also determined that the contract clauses allowing for the addition of new cloud services to the contract after contract award still resulted in firm-fixed prices for all cloud services under the contract. We present facts and analysis related to the D&F in Section III of this report.

Also on July 19, 2018, Ms. Lord signed an ADM that authorized the JEDI Cloud PM to release the final RFP for the JEDI Cloud.

On July 23, 2018, the Source Selection Authority (SSA) approved and signed the Source Selection Plan to establish the acquisition for the JEDI Cloud. The SSA is the DoD official designated by the head of the agency to make the source selection decision for the JEDI Cloud procurement on behalf of the Government. The plan identified each source selection team member’s role and responsibility and provided guidance for their evaluation of submitted proposals. The Source Selection Plan was also signed by the chairpersons of the Source Selection Evaluation Board (SSEB), Price Evaluation Board (PEB), Source Selection Advisory Council (SSAC), and WHS legal counsel.

²³ Mr. Gavin, who on April 2, 2018, had accepted a job with AWS, attended an April 5, 2018, meeting to review the draft acquisition strategy. We present facts and analysis regarding misconduct allegations against Mr. Gavin in Section IV, below.

²⁴ 10 U.S.C. § 2304a(d)(3) is implemented at FAR 16.504(c)(1)(ii)(D)(1). DFARS Part 216, “Types of Contracts,” Subpart 216.5, “Indefinite-Delivery Contracts,” Section 216.504, “Indefinite-quantity contracts,” states that the authority to make the determination authorized in FAR 16.504(c)(1)(ii)(D)(1) shall not be delegated below the level of the senior procurement executive. DFARS Part 202, “Definitions of Words and Terms,” Subpart 202.1, “Definitions,” Section 202.101, “Definitions,” states that “senior procurement executive” means, for the DoD (including the defense agencies), the Under Secretary of Defense (Acquisition, Technology, and Logistics). USD(AT&L) is now USD(A&S) and USD(R&E), see footnote 6.

On July 23, 2018, the PCO wrote that “during the pre-solicitation phase of the JEDI Cloud procurement,” she learned that Mr. Ubhi may have had access to procurement sensitive information during a time when he had a financial interest in or covered relationship with Amazon. The PCO investigated this matter by interviewing witnesses, collecting documents, and developing a timeline that detailed the dates that Mr. Ubhi left AWS, joined the DDS, began work on cloud market research, discussed the potential Table Hero acquisition with AWS, recused himself from matters related to AWS, and then resigned from the DDS. The PCO found that Mr. Ubhi was restricted from participating in matters related to AWS for a period that ended in January 2017, 1 year after he left AWS, and 9 months before he began working on cloud market research activities. The PCO concluded that Mr. Ubhi (1) participated only in commercial cloud services market research activities, (2) “promptly recused himself” from involvement in the DoD’s initiative to accelerate the adoption of cloud technology once AWS “expressed an interest in purchasing” a business that he [Mr. Ubhi] owned, and (3) did not negatively impact the procurement. We present facts and analysis related to the matters the PCO investigated in Section IV of this report.

JEDI Cloud Final Request for Proposals

On July 26, 2018, the DoD released the final JEDI Cloud RFP, with the Statement of Objectives. In a letter issued with the final RFP, Mr. Deasy stated that the DoD needed an information technology environment that allowed for data-driven decision making; maximized DoD applications and data resources; and achieved economies of scale across the enterprise. He further stated that the JEDI Cloud was a first step to provide an enterprise approach for obtaining general purpose infrastructure and platform services that could meet a majority of DoD’s needs. Mr. Deasy also stated that the JEDI Cloud would serve as a pathfinder for the DoD to learn how to deploy an enterprise cloud at scale with security, governance, and modern architectures allowing the DoD flexibility to be innovative and keep pace with evolving technology. Mr. Deasy told us that the DoD would always have a multiple cloud environment; however, the DoD needed to manage all of its clouds as an enterprise, as opposed to individually managed, component-level clouds.

The JEDI Cloud RFP stated that the JEDI Cloud contract would be a single award ID/IQ contract with a minimum guaranteed award amount of \$1 million and maximum amount, not to exceed \$10 billion over 10 years. According to the RFP, the contractors would provide a catalog of services for unclassified and classified IaaS, PaaS, and cloud support services, as well as tactical edge products and services at fixed-unit prices. The RFP stated that the catalog would be incorporated into the contract and serve as the basis for task order pricing for the duration of the contract. The RFP then stated that users would place task orders based on the catalog with fixed prices to acquire cloud services under the JEDI Cloud contract. The RFP required that the prices for the services offered to the DoD not be greater than the prices that are publicly-available in the commercial marketplace.

The JEDI Cloud RFP also included several one-time use special contract requirements and clauses to address the highly complex nature of the JEDI Cloud requirements. One clause allowed for the addition of new or improved cloud services to the contractor’s catalog after contract award. Additionally, to enable the DoD to take advantage of decreasing market prices for cloud services, the RFP included a clause that required contractors to lower the price offered to the DoD to match any price available to public commercial customers. We present facts and analysis related to the development of the RFP in Section III of this report.

The JEDI Cloud RFP stated that contractor proposals would be evaluated based on the following nine factors.²⁵

- Factor 1: Gate Criteria (Sub-factors) requires demonstration of seven key, minimum requirements
- Factor 2: Logical Isolation and Secure Data Transfer
- Factor 3: Tactical Edge
- Factor 4: Information Security and Access Controls
- Factor 5: Application and Data Hosting and Portability
- Factor 6: Management and Task Order 001
- Factor 7: Small Business Participation Approach
- Factor 8: Demonstration
- Factor 9: Price

The JEDI Cloud RFP outlined a two-phase proposal evaluation process that the Source Selection officials would follow. Section M2 of the RFP stated that during the first phase, the DoD would evaluate the proposals only on Factor 1, Gate Criteria. According to DFARS Part 215, "Source Selection," Subpart 215.300, "Scope of Subpart," the contracting officer shall follow the DoD Source Selection Procedures when conducting negotiated competitive acquisitions, using FAR Part 15 procedures. DoD Source Selection Procedures state that a solicitation may prescribe minimum "pass/fail" gate criteria that a contractor must meet before advancing in the proposal evaluation process.

The JEDI Cloud RFP established seven gate evaluation criteria.²⁶ Specifically, the RFP stated that if a contractor received a rating of "unacceptable" under any of the gate criteria, the proposal would not be further evaluated against the remaining factors and, therefore, would not be considered for contract award. The RFP described the factor 1, Gate Criteria seven sub-factors as shown below.

- Sub-factor 1.1: Elastic Usage, required the contractor to provide a report for the months of January and February 2018 showing that JEDI Cloud usage would not represent a majority (greater than 50 percent) of the contractor's network, compute, and storage usage.
- Sub-factor 1.2: High Availability and Failover, required the contractor to have not fewer than three physical existing unclassified Commercial Cloud Offering (CCO) data centers within the United States, supporting at least one IaaS offering and one PaaS offering that were FedRAMP Moderate "Authorized"; global network availability; data storage redundancy; and automatic monitoring of resource utilization and events.

²⁵ See Appendix G, *Request for Proposals Section M: Evaluation for Award*.

²⁶ See Appendix F, *Request for Proposals Gate Criteria*.

- Sub-factor 1.3: Commerciality, required the contractor to show that total revenue attributed to the U.S. Government was less than 50 percent of total CCO revenue.
- Sub-factor 1.4: Offering Independence, required the contractor to show that services for storage, compute, and network IaaS would not require bundling with any particular PaaS or Software-as-a-Service product.
- Sub-factor 1.5: Automation, required a demonstration of the contractor's ability to automate identity and access management, provisioning, billing, service usage, and security policy compliance.
- Sub-factor 1.6: Commercial Cloud Offering Marketplace, required a demonstration of the contractor's easy to use online marketplace to use cloud service offerings from the contractor and third-parties.
- Sub-factor 1.7: Data, required a demonstration and detailed explanation of the contractor's ability to store and retrieve petabytes of data.

Section M2 of the JEDI Cloud RFP stated that during the second phase of proposal review, Source Selection officials would evaluate the remaining proposals on Factors 2 through 6, and Factor 9. The results of this evaluation would determine the contractors that would be in the "competitive range" of proposals that the Source Selection officials would evaluate against Factors 7 and 8. Proposals excluded from the competitive range would not be further evaluated. The RFP stated that the remaining contractors would be invited to participate in discussions with the DoD and submit a final revised proposal. Source Selection officials would make a best value determination based on the final proposals. We present facts and analysis related to the evaluation of the proposals and the Source Selection in Section III of this report.

JEDI Cloud Contract Protests and Inquiries

On August 6, 2018, Oracle filed a pre-award protest with the Government Accountability Office (GAO) stating that the DoD's decision to award the JEDI Cloud to a single contractor was unlawful and irrational; the RFP did not provide a valid way to assess price; and the procurement would not produce a best value for the DoD. Oracle amended its protest three times and filed revised protests on August 23, September 6, and October 1, 2018. In these revised protests, Oracle added assertions that the DoD structured the JEDI Cloud RFP to restrict competition; the solicitation exceeded the DoD's needs; and the DoD failed to properly consider conflicts of interest.

(FOUO) [REDACTED]

(FOUO) In our interview with Mr. Sweeney, DoD Office of General Counsel (OGC) attorney (Agency Counsel) instructed Mr. Sweeney not to answer our questions about [REDACTED]. The DoD OGC told us that Mr. Sweeney was not authorized to disclose information that would be covered by what counsel referred to as the "presidential communications privilege," which the Agency Counsel stated

“extends to conversations between the President and representatives of the Department of Defense, anyone on the White House staff and the Department of Defense, and any communications internal to the Department of Defense concerning information they have received from the White House or staff.”²⁷

From August 23, 2018, to October 9, 2018, the DoD amended the JEDI Cloud RFP four times. RFP Amendment 001 included 77 individual changes to clarify and refine the requirements. A Summary of Changes document detailed amendments to the Gate Criteria submission instructions, the SOO, the Price Scenarios, among others. RFP Amendment 002 included 24 changes to the General RFP Instructions, Written Proposal instructions, and the Price Scenarios, among others; RFP Amendment 003 replaced 1 paragraph regarding the proposal submission; and RFP Amendment 004 updated the Price Scenario template.

On October 10, 2018, IBM filed a pre-award protest with the GAO, asserting that the solicitation conflicted with statute, regulation, and bedrock principles of public contracting. Specifically, IBM asserted that the single-award solicitation violated Congressional mandates to use multiple award ID/IQ contracts; violated the prohibition against major single-award contracts due to the RFP’s new services clause and inadequate definition of specific tasks to be performed; and improperly sought noncommercial items under a commercial item procurement. In addition, the protest stated that the solicitation had the appearance of conflicts of interest, did not sufficiently explain how offers would be evaluated, was based on inadequate market research, and called for an unreasonable price evaluation that did not sufficiently evaluate the cost to the Government.

(~~FOUO SSI~~) On October 12, 2018, the DoD received seven proposals in response to the JEDI Cloud RFP: from Oracle, IBM, Microsoft, Amazon, [REDACTED]
[REDACTED]

On October 22, 2018, U.S. Representatives Steven Womack and Tom Cole, U.S. House of Representatives, sent a letter to the DoD OIG expressing concern regarding the development of the JEDI cloud requirements and the RFP process. Representatives Womack and Cole stated concerns that the RFP contained restrictive “gate” provisions that appeared to favor one contractor, and that DoD senior officials had “significant connections” to the contractor and were “involved in the development of the JEDI program.” The Representatives requested that the DoD OIG investigate the development of requirements and the RFP process for the JEDI Cloud program.

On November 14, 2018, the GAO denied Oracle’s protest. The GAO’s decision stated that DoD’s single-award approach to obtain cloud services was consistent with statute and regulation, that DoD provided reasonable support for all of the solicitation provisions that Oracle asserted exceeded the DoD’s needs, and that Oracle’s allegations of conflicts of interest did not provide a basis for sustaining the protest. We present additional information regarding Oracle’s GAO protest in Appendix A to this report.

²⁷ We discuss the issue of “presidential communications privilege,” and its impact on our review, in the section below that examines whether the White House improperly influenced the JEDI Cloud contract source selection.

On December 6, 2018, Oracle filed a pre-award protest in the U.S. Court of Federal Claims (COFC) arguing that the single award decision, unduly restrictive RFP terms, and conflicts of interest undermined its ability to compete fairly for the contract. Oracle stated that the:

- DoD's single award determination violated the law;
- Contracting Officer's conclusion that the FAR required DoD to adopt a single award acquisition approach lacked a rational basis;
- RFP Gate Criteria Sub-factors 1.1 (Elastic Usage), 1.2 (High Availability and Failover), and 1.6 (Marketplace) exceeded DoD's minimum needs and unduly restricted competition in violation of the Competition in Contracting Act; and
- PCO failed to investigate and address conflicts of interest regarding two individuals.

On December 11, 2018, the GAO dismissed IBM's protest because Oracle's complaint before the COFC included arguments that were the same or similar to the assertions presented in IBM's protest. The GAO decided that it would not address matters that were under COFC's review at the time.

On December 18, 2018, Deputy Secretary Shanahan issued the DoD's Cloud Strategy to address key cloud computing objectives, challenges, and strategic approaches for the DoD. The DoD Cloud Strategy stated that "the appropriate strategy for the DoD will be to leverage a combination" of multiple clouds "along with the advantages of multiple commercial cloud providers." The strategy also stated that the DoD intends for the JEDI Cloud to become one of the clouds in the DoD's existing multi-cloud environment, which includes the Defense Information Systems Agency's milCloud 2.0 and multiple specialized clouds. The environment would also include the Defense Enterprise Office Solution for DoD-wide implementation of Microsoft's cloud-based Office 365.²⁸ Further, the strategy stated that the JEDI Cloud would be a commercial general purpose enterprise cloud solution for a majority of DoD systems and applications.

When the JEDI Cloud is not capable of supporting mission needs, the DoD may use other cloud solutions. The DoD Cloud Strategy also stated that the JEDI Cloud would be the foundational approach to deliver the benefits of an enterprise cloud that offers IaaS and PaaS, separate environments at all classification levels, and centralized to tactical edge computing for the warfighter. The strategy added that the JEDI Cloud would also enable the DoD to leverage emerging technologies such as artificial intelligence.

Allegations Regarding Former DoD Officials

On February 12, 2019, AWS informed the PCO by letter that Mr. Ubhi may have made false statements to DoD officials regarding the reasons for and timeliness of his October 31, 2017, disqualification from the DoD cloud initiative, and to AWS officials regarding legal advice he received from DoD ethics officials about post-government employment. The PCO reopened the investigation she concluded on July 23, 2018, regarding Mr. Ubhi, to determine if this new information would cause her to change her determination that Mr. Ubhi did not negatively impact the procurement.

From March 21, 2019 through September 4, 2019, the DoD OIG received four complaint letters from Oracle alleging that former DoD officials engaged in misconduct related to commercial and

²⁸ The Defense Enterprise Office Solution is a single-award contract with an up to 10-year ordering period.

financial relationships with Amazon or its affiliates. The complaints alleged that the officials failed to disclose their relationships with Amazon, their participation in the JEDI Cloud procurement, and their post-Government employment with Amazon. We address the misconduct allegations in Section IV of this report.

On April 9, 2019, the PCO completed her reopened investigation and issued an “Organizational Conflict of Interest Determination.” The document stated that “none of the information” about Mr. Ubhi’s conduct and Mr. Gavin’s participation in the April 5, 2018, acquisition strategy meeting “leads me to conclude” that AWS received an “unfair competitive advantage,” and “no OCI [organizational conflict of interest] exists.” The PCO wrote in a separate determination that Mr. Ubhi did not have access to “competitively useful” information, his participation in “preliminary stages” of acquisition planning did not introduce bias that favored Amazon, and his actions did not negatively impact the JEDI Cloud procurement. She also wrote that she would refer Mr. Ubhi’s conduct to the DoD OIG, but we found no evidence she did so before we interviewed her in May 2019.

We present further facts and analysis related to matters the PCO investigated in Section IV of this report.

Initial Proposal Evaluation Results, White House Briefings, and Court Decision

(FOUO-SSI) On April 10, 2019, the DoD informed [REDACTED]

[REDACTED] Therefore, the proposals were eliminated from competition.

On July 10, 2019, Mr. Deasy, Chief of Staff to the Secretary of Defense Eric Chewning, and Deputy DoD CIO for Information Enterprise Peter Ranks, presented a briefing, “JEDI: Understanding the Warfighting Requirements for DoD Enterprise Cloud,” to Mr. Mick Mulvaney, Acting White House Chief of Staff. On July 18, 2019, they presented the same briefing to Charles Kupperman, White House Deputy National Security Advisor. The briefing included information intended to correct inaccurate assertions about the procurement that had appeared in the media. We present additional information about engagements with the White House in Section III of this report, in our review of potential White House influence on the JEDI Cloud source selection.

On July 18, 2019, CNBC reported on remarks that President Trump made in the Oval Office in response to a reporter who asked if there was any chance that he would “intervene” in the JEDI Cloud procurement. President Trump stated that he had received “tremendous complaints” about the procurement and would “take a close look at it.” In Section III of this report, we discuss our analysis of allegations of White House influence on the JEDI Cloud source selection.

On July 19, 2019, the COFC entered a judgment in favor of the DoD, with regard to Oracle’s protest. On July 26, 2019, the court issued its supporting opinion, which stated the following.

- Gate criteria, Sub-factor 1.2 that Oracle failed to satisfy was enforceable.
- The PCO reasonably justified her determination to use a single award approach, but Ms. Lord's determination to approve the use of a single award approach was not consistent with an "ordinary reading" of 10 U.S.C. § 2304a(d)(3)(B)(ii) (2018). The opinion noted that Ms. Lord stated in the D&F that for the JEDI cloud procurement "the contract provides only for firm-fixed-price task orders or delivery orders for services for which prices are established in the contract for the specific tasks to be performed." Ms. Lord's determination to approve the use of single award approach also included contract clauses to allow the PCO to add new cloud services to the contract in the future as the market evolves. The opinion stated that there was a disconnect between claiming that prices are "established in the contract" for "specific tasks" while simultaneously acknowledging that those tasks, and their accompanying prices, do not yet exist. The opinion also stated that in an ordinary reading of 10 U.S.C. § 2304a(d)(3)(B)(ii) (2018), prices for specific services must be "established" at the time of contracting. The opinion further stated that prices for new, additional services to be identified and priced in the future, even if they may be capped in some cases, are not, by definition, fixed or established at the time of contracting. In addition, the opinion stated that despite this inconsistency, the single award determination did not prejudice Oracle, because Oracle would not have had a better chance of competing for the contract due to Oracle "not meet[ing] the agency's properly imposed security requirements" which were not related to the single award approach.²⁹
- The PCO's determinations that conflicts of interest reported to her did not impact the procurement were rational and consistent with the FAR.
- The PCO's work was "thorough and even-handed."
- The persons whom Oracle asserted were conflicted were "bit players" whose involvement "did not taint" the work of those who controlled the direction of the procurement.

Additional information regarding Oracle's protest and the COFC opinion is contained in Appendix B to this report.

Secretary Esper's Review of the JEDI Cloud Procurement

On July 23, 2019, the U.S. Senate confirmed Mr. Mark Esper as the Secretary of Defense. The same day, Mr. Deasy met with Secretary Esper for a "brainstorming session" to determine what information Secretary Esper needed to know about the JEDI Cloud. On July 24, 2019, Secretary of Defense Esper announced that he would review the JEDI Cloud procurement. Mr. Esper told us that multiple Members of Congress had asked him before and during his confirmation hearing about the JEDI Cloud procurement. He told us that he directed the review so that he could learn about the JEDI cloud and its importance to the warfighter. He said that he also wanted to understand the complaints surrounding the procurement and whether the process the DoD followed to procure the JEDI cloud was fair. However, Agency Counsel instructed Secretary Esper not to answer our questions about White House involvement in his review.

²⁹ We present our analysis of the PCO and Ms. Lord's determinations in Section III of this report.

On July 29, 2019, Mr. Deasy and Mr. Ranks called Mr. Chris Liddell, Assistant to the President and Deputy White House Chief of Staff for Policy Coordination, and asked how to get correct information about the JEDI Cloud procurement to President Trump so that the White House did not make any decisions based on information “provided by lobbyists.” According to Mr. Ranks, Mr. Liddell said that President Trump was not engaging anyone on the topic.

On August 14, 2019, Mr. Ranks briefed Ms. Cummings on the status of the JEDI Cloud procurement, so that Ms. Cummings could update Ms. Lord. We present facts and analysis related to allegations regarding Ms. Cummings ownership of Microsoft stock in Section IV of this report.

On August 21, 2019, Mr. Deasy hosted four White House officials for meetings at the Joint Artificial Intelligence Center in Crystal City, Virginia. The White House officials were Mr. Liddell; Ms. Jacqueline Moorhead, Special Assistant to the President and Director of the Office of Policy Coordination; Dr. Kelvin Droegemeier, Director, Office of Science and Technology Policy; and Dr. Erik Noble, Senior Policy Advisor, Office of Science and Technology Policy. The 12 agenda items included digital modernization, the stand-up and progress of the Joint Artificial Intelligence Center, and an “enterprise cloud discussion.” Mr. Ranks told us that the enterprise cloud discussion was needed so the audience would understand that the DoD needed the enterprise cloud to leverage artificial intelligence technology and realize its digital modernization objectives.

On August 23, 2019, Mr. Deasy and Mr. Ranks conducted the first JEDI Cloud “education sessions” for Secretary Esper’s JEDI Cloud review. The other meetings occurred on August 29, September 10, and September 16, 2019. Mr. Deasy told us that Secretary Esper and Deputy Secretary Norquist were present for all the sessions, with various other individuals in attendance depending on the topic. The topics discussed during these meetings related to warfighting requirements for cloud computing, the DoD Cloud strategy, cloud computing in the intelligence community, a complaint letter that Oracle sent to Secretary Esper, and the JEDI Cloud requirements and RFP development process.³⁰ Mr. Deasy stated that topics discussed during these meetings did not include source selection information or discussions of which contractor would be awarded the contract. We discuss Secretary Esper’s review in more detail in Section III of this report.

On August 26, 2019, Oracle appealed the COFC’s judgment to the U.S. Court of Appeals for the Federal Circuit. This appeal is pending.

Secretary Esper invited 28 U.S. Representatives and Senators to a September 26, 2019, meeting at the Pentagon to hear their concerns about the JEDI Cloud program. Four attended. Secretary Esper told us the attendees’ concerns were the same as what were in the press related to single award, competition, award amount, and conflicts of interest.

From September 13 through September 26, 2019, Ms. Cummings participated in a series of meetings with CCPO, OCIO, and other DoD officials to discuss a draft decision briefing the OCIO prepared to present to Secretary Esper following the completion of his review. The briefing contained options for the JEDI cloud procurement to continue as planned with the source selection or to make

³⁰ On August 19, 2019, Oracle sent a letter to Secretary Esper urging him to “reset, rework, and recompetite DoD’s cloud solicitation.”

changes to the solicitation, such as ceiling price or contract length. We present additional facts related to the so-called "Options Brief" in Sections III and IV of this report.

On September 27, 2019, the WHS AGC 1 reviewed Ms. Cummings' Office of Government Ethics (OGE) Form 278e and noted that she owned Microsoft stock valued between \$15,001 and \$50,000. The WHS AGC 1 contacted an attorney in the DoD Standards of Conduct Office (SOCO), who advised Ms. Cummings to disqualify herself from participating in matters related to Microsoft. Ms. Cummings signed a disqualification and notified her supervisor the same day, and she did not participate further in the JEDI procurement. We present facts and analysis related to Ms. Cummings' actions in Section IV of this report.

JEDI Cloud Contract Source Selection and Award

On September 27, 2019, the Source Selection Evaluation Board (SSEB) Chairperson completed the review of the Technical Evaluation Board (TEB) ratings for Factors 2-6 and Factor 8, and the Small Business Evaluation Board rating for Factor 7. The SSEB Chairperson documented the review and summary of these factors in the SSEB Executive Summary report, which was later reviewed by the Source Selection Advisory Council (SSAC) as a contributing document to make an award recommendation. The SSEB Chairperson signed the Executive Summary report on October 3, 2019.

On September 29, 2019, the Price Evaluation Board (PEB) Chairperson completed the Final PEB report, documenting the events, analysis, findings, and determinations related to Factor 9, Price. The SSAC then reviewed the final PEB report as a contributing document to make an award recommendation. The PEB Chairperson signed the Final PEB report on September 30, 2019. On September 30, 2019, the SSEB and PEB briefed the SSAC and the SSA on evaluation results for Factors 2-9.

On September 30, 2019, the SSA approved the final Source Selection Plan (SSP) with concurrence from legal counsel and applicable Source Selection Team (SST) chairs. The final SSP reflected the amendments to Sections L and M of the RFP, updated all changes to the SST membership, and revised the schedule of events.

On October 3, 2019, after several days of consideration, which included SSAC internal meetings, briefings from the SSEB and PEB, and review of source selection materials and reports, the SSAC completed and signed its Comparative Analysis and Award Recommendation report, recommending the SSA to select Microsoft as the awardee.

On October 3, 2019, the DoD SOCO referred to us the allegation that Ms. Cummings had a financial interest in Microsoft and improperly participated in the JEDI Cloud procurement. We address the allegation regarding Ms. Cummings in Section IV of this report.

On October 7, 2019, Secretary Esper recused himself from participating in decision briefings and making determinations about the JEDI Cloud acquisition, and he delegated those duties to Deputy Secretary Norquist. In a November 18, 2019, e-mail to us about Secretary Esper's recusal, Mr. Scott Thompson, Director, DoD Standards of Conduct Office explained:

Although the law did not require the SD to recuse himself from such matters, he did so on his own initiative because his adult son is employed by IBM, a company that originally submitted a proposal, but had already been eliminated from the competition by the time SD Esper came to office.

On October 7, 2019, Deputy Secretary Norquist instructed the DoD CIO to “finalize the JEDI source selection and award in accordance with the current Request for Proposals,” according to a memorandum that Deputy Secretary Norquist signed on October 18, 2019.

On October 16, 2019, Deputy Secretary Norquist asked the DoD OIG whether the information in its investigation, to date, should prevent the DoD from moving ahead with a contract award. The DoD OIG concluded that its investigation should not prevent the award of the contract.

On October 17, 2019, the DoD OIG provided Deputy Secretary Norquist a statement that read, “The DoD OIG’s multidisciplinary team of auditors, investigators, and attorneys are close to completing the review of the JEDI Cloud acquisition. The DoD has consulted the DoD OIG, and we have shared our views on the JEDI acquisition and provided information on the status of the review. To date, we have not found evidence that we believe would prevent the DoD from making a decision about the award of the contract.”

On October 17, 2019, the SSA reviewed the SSEB, PEB, and SSAC reports; made the decision to award the JEDI contract to Microsoft; and signed the completed Source Selection Decision Document (SSDD). The SSDD documented the SSA’s selection of Microsoft’s proposal for award of the JEDI Cloud contract, stating that Microsoft’s proposal represented the best value to the Government. In addition, the SSDD documented the discussions and evaluation of final proposals, and explained the source selection decision.

On October 18, 2019, the PCO completed an investigation into whether Ms. Cummings’ participation in activities related to the JEDI Cloud procurement had “any impact on the pending award or selection of the contractor.” The PCO concluded that her participation did not have an impact. The PCO stated that she “found no evidence that Ms. Cummings (1) provided any input impacting the JEDI Cloud acquisition decisions or documents; (2) obtained or disclosed contractor bid or proposal information; or (3) provided direct input into the options presented to the Deputy Secretary.” However, the PCO found that Ms. Cummings “possibly” violated 18 U.S.C. 208, and stated “this matter has been referred to ethics counsel for further review and action, to include any required referrals to the DoDIG.”

On October 22, 2019, in a statement e-mailed from a DoD spokesperson to reporters, the DoD announced that following “informational briefings” on the JEDI program, Secretary Esper was removing himself from “participating in any decision making following the information meetings, due to his adult son’s employment with one of the original contract applicants.” The statement stated that Secretary Esper delegated decision making concerning the JEDI Cloud program to Deputy Secretary Norquist “out of an abundance of caution.” The statement added that the procurement itself would “continue to move to selection through the normal acquisition process run by career acquisition professionals.”

On October 24, 2019, Ms. Lord, who was aware of Deputy Secretary Norquist’s October 7, 2019, decision, signed a memorandum authorizing the CCPO to proceed with the “process for award in accordance with the solicitation.”

On October 25, 2019, the DoD awarded the JEDI Cloud contract to Microsoft Corporation. The base contract period was for 2 years, with a guarantee of at least \$1 million in task orders during that period. If the DoD exercises all option periods, the contract period could grow to 10 years. The total value of all orders placed against the contract during the potential 10-year period would not exceed \$10 billion.

Disclosure of Source Selection and Proprietary Information After Award

FAR 15.506 states that, after contract source selections are complete and the contract award has been announced, upon written request, the contracting officer, such as the Procuring Contracting Officer (PCO), will provide information to the contractors about the selection decision and contract award. According to FAR 15.506(d), a post-award debriefing should include the Government's evaluation of the contractor's proposal; the overall cost and technical rating of the successful and unsuccessful contractor; a summary of the rationale for the award; and reasonable responses to relevant questions about whether source selection procedures were followed.

On October 11, 2019, the WHS AGC 2 updated the list of enclosures in the draft letter to AWS to include the unredacted TEB Reports for Factors 2-8, in addition to the redacted SSDD, SSAC, SSEB, PEB reports, as part of the post-award debriefing for AWS. Between October 21 and October 24, 2019, the Contract Specialist and the WHS AGC 2 disagreed over how much source selection and proprietary information should be redacted from the SSDD, SSAC, SSEB, and PEB Reports. On October 24, 2019, the Contract Specialist expressed concern to the WHS AGC 2 that the redactions were insufficient and would allow too much information to be released. Specifically, the Contract Specialist e-mailed the WHS AGC 2 and the PCO expressing concern about the source selection analysis information not having sufficient redactions, which would allow for a point-by-point comparison of the proposals, potentially in violation of FAR 15.506(e). On that same day, the PCO instructed the Contract Specialist to defer to the WHS AGC 2 regarding the information to be redacted.

On October 25, 2019, the PCO notified Microsoft through e-mail that it had been awarded the JEDI Cloud contract.

Within an hour of awarding the contract, the Contract Specialist, using the PCO's computer, notified AWS through e-mail that its proposal was not selected for award and provided AWS with a written post-award debriefing. The written debriefing consisted of a notification e-mail including the redacted SSDD, SSAC, SSEB, PEB reports and the 13 unredacted AWS TEB reports. However, the e-mails to AWS also contained 13 unredacted Microsoft TEB reports disclosing Microsoft source selection and proprietary information to AWS.

On October 26, 2019, CNN published an excerpt from a book written by retired Navy Commander Guy Snodgrass, who had been Secretary Mattis's chief speechwriter. According to the book, "In the summer of 2018, Trump called and directed Mattis to 'screw Amazon' by locking them out of a chance to bid" for the JEDI contract. The book further stated, "Relaying the story to us during Small Group [meeting], Mattis said, 'We're not going to do that.' This will be done by the book, both legally and ethically."

On October 29, 2019, AWS submitted 265 post-award enhanced debriefing questions to the PCO. After reviewing the questions, which included details about Microsoft's proposal, the PCO and

CCPM realized that AWS had received Microsoft's TEB Reports as part of the written debriefing, which it should not have received. Specifically, as noted above, on October 25, 2019, the Contract Specialist, on behalf of the PCO, had not only attached AWS's TEB reports in the e-mail to AWS, but had also attached Microsoft's TEB reports to the debriefing e-mails sent to AWS. The CCPM notified Microsoft and AWS of the disclosure of the Microsoft TEB reports to AWS that same day.

On November 21, 2019, the U.S. Attorney for the Eastern District of Virginia (EDVA) declined prosecution of Mr. Ubhi. When asked about the reasons for the declination, it advised that it does not comment publicly on prosecutorial decisions.

On December 3, 2019, Microsoft's outside counsel notified AWS that the "materials unintentionally disclosed to AWS – the Microsoft Reports and [Source Selection Information] – contain and represent Microsoft's trade secrets and confidential, proprietary, and competition-sensitive business and technical information." On the same day, Microsoft's Corporate Vice President and General Counsel requested an opportunity to brief the WHS OGC on the impacts of the disclosure and Microsoft's "analysis of the extent to which information from the Microsoft Reports and SSI can be used against Microsoft in the JEDI procurement (should there be a re-compete) and in other federal procurements." We present facts and analysis related to this disclosure of Microsoft's TEB reports, which contained source selection and proprietary information, in Section III of this report.

On December 9, 2019, AWS filed its bid protest in the U.S. Court of Federal Claims asserting egregious errors in the source selection evaluation and improper pressure from the President of the United States.

On February 13, 2020, the U.S. Court of Federal Claims granted Amazon's request for a preliminary injunction to stop the DoD from proceeding with JEDI Cloud contract activities until further order of the court. Amazon argued that the DoD improperly evaluated Microsoft's proposal for the application and data hosting price scenario. The court reviewed the portions of the court record cited by the DoD, Amazon, and Microsoft, considered their arguments, and concluded that Amazon is likely to demonstrate that the DoD erred in its evaluation of a discrete portion of Microsoft's proposal for this price scenario, and therefore granted the injunction.

On March 2, 2020, the EDVA declined prosecution of Ms. Cummings. When asked about the reasons for the declination, it advised that it does not comment publicly on prosecutorial decisions.

III. DOD OIG REVIEW OF THE JEDI CLOUD PROCUREMENT

We examined the DoD's decision to award the JEDI Cloud Indefinite Delivery/Indefinite Quantity (ID/IQ) contract to a single contractor and assessed whether this single award was consistent with industry best practices and acquisition standards. We also examined whether the JEDI Cloud RFP was consistent with applicable acquisition standards. In addition, we examined whether the DoD followed the DoD Source Selection Procedures and RFP requirements during the source selection process. We also reviewed the improper disclosure of Microsoft's proprietary information after contract award. Finally, we reviewed whether the White House influenced the JEDI Cloud contract source selection. This section presents the results of our reviews.

1. Single Award ID/IQ Contract

In examining the DoD's rationale for awarding the JEDI Cloud contract to a single contractor, we reviewed Federal and DoD acquisition regulations, the JEDI Cloud market research materials, the Business Case Analysis (BCA), the JEDI Cloud acquisition strategy, and the rationale for single award from the Procuring Contracting Officer (PCO) and the Undersecretary of Defense for Acquisition and Sustainment (USD[A&S]). We consulted with DoD contracting and technical experts regarding the DoD acquisition process and cloud technical and security requirements. We also reviewed the video of Industry Day, the Request for Information (RFI), two draft Requests for Proposal (RFP), the questions and comments from industry, and the responses from the DoD.

a. Market Research

FAR Part 10, "Market Research," requires the DoD to conduct market research before developing requirement documents for an acquisition and to determine if commercial items are available to meet the DoD's needs.³¹ According to the FAR, techniques for conducting market research may include contacting knowledgeable individuals in Government and industry regarding market capabilities; conducting meetings or holding pre-solicitation conferences to involve potential contractors early in the acquisition process; and publishing formal requests for information.³²

On September 29, 2017, DoD officials began market research efforts for the JEDI Cloud procurement. Specifically, officials from the offices of the DoD Chief Information Officer (CIO) and USD(A&S) held 11 "Cloud Focus Sessions" with the Army, Navy, Air Force, Marine Corps, and other DoD Components, as well as industry information technology experts, to understand lessons learned from prior cloud computing efforts and current cloud computing initiatives across the DoD, as well as industry trends. In addition, the Defense Digital Service (DDS) held eight one-on-one meetings with industry leaders, including Amazon Web Services (AWS), Microsoft, and Google, among others, to learn about commercial cloud service offerings.

As a result of the information learned during the meetings with DoD Components and industry experts, DoD officials concluded that enterprise solutions were critical to achieving security, economies of scale, advanced analytics, communication, and collaboration in the DoD's cloud. On October 30, 2017, the Cloud Executive Steering Group (CESG) issued an RFI to obtain industry input on how to structure the planned solicitation. On March 7, 2018, DDS officials held an Industry Day to introduce the JEDI Cloud program, explain how it would be executed, encourage early industry participation in the acquisition process, and invite industry's feedback on the first draft RFP.

~~(FOUO SSI)~~ On March 27, 2018, the Cloud Computing Program Office (CCPO) finalized the Market Research Report, [REDACTED]

In addition, DoD officials spoke with Intelligence Community officials to understand the lessons learned from their prior cloud procurement efforts. In 2014, the Central Intelligence Agency (CIA) had

³¹ FAR Part 10, "Market Research," Section 10.001(a)(2)(i)-(ii).

³² FAR 10.002(b)(2).

launched Commercial Cloud Service (C2S), a commercial enterprise cloud from a single contractor. CIA officials stated to DoD officials that since 2014, as a single-award contract, C2S allowed the CIA to build a foundational understanding of cloud computing and security. In March 2019, the CIA announced that its next enterprise cloud contract, Commercial Cloud Enterprise (C2E), would acquire cloud services from multiple contractors. A DDS official involved in the conversations with the CIA explained to us that after years of successfully managing a single cloud from a single contractor, the CIA was ready to integrate and secure cloud services from multiple contractors across its enterprise. He also stated that the CIA now has a technical workforce with the cloud expertise necessary to successfully manage multiple clouds.

The DDS official who participated in the meetings told us that the DoD's current workforce lacked the technical proficiency to configure, secure, and optimize the benefits of cloud computing. He stated that by acquiring an enterprise cloud from a single contractor first, the DoD was following the CIA's example. Subsequently, the JEDI Cloud Statement of Objectives explicitly stated that a single contractor JEDI Cloud would serve as a pathfinder for the DoD to understand how to deploy an enterprise cloud at scale with security, governance, and modern architectures.

b. Rationale for and Authorization to Award a Single ID/IQ Contract

On April 11, 2018, DoD Chief Management Officer (CMO) Gibson and the Cloud Computing Program Manager (CCPM) approved the JEDI Business Case Analysis (BCA). According to the DoD Product Support Business Case Analysis Guidebook, a BCA is a document that aids decision making by using a structured methodology to evaluate the expected benefits, risks, and financial and non-financial impacts of alternative solutions to a problem. The JEDI BCA described the DoD's current problem as a "computing and storage infrastructure [that] critically failed to meet DoD mission and business needs." The CCPO evaluated the following five solutions to solve the problem.

- 1) Status quo.
- 2) Predominantly DoD data centers and cloud
- 3) Hybrid of DoD data centers and JEDI Cloud
- 4) Predominately JEDI Cloud from a single contractor
- 5) Predominantly JEDI Cloud from multiple contractors.

The CCPO rated the solutions against eight objectives—available and resilient services; global accessibility; centralized management and distributed control; ease of use; commercial parity; modern and elastic computing, storage, and network infrastructure; fortified security; and advanced data analytics.

After analyzing the solutions, the CCPO determined that solution 1, the status quo, a mix of DoD-owned data centers operated by DoD or contractors and over 500 commercial cloud offerings purchased and managed by individual DoD Components, did not meet any of the eight objectives. The CCPO stated that solutions 2, 3, and 5 met few or no objectives and migrated fewer DoD applications to the JEDI Cloud. The BCA recommended solution 4, predominately JEDI Cloud from a single contractor that met seven of the eight objectives and was "predicated on an enterprise-wide contracting vehicle." This solution proposed that 80 percent of DoD applications would migrate to the JEDI Cloud, 10 percent would be hosted at data centers, and 10 percent would migrate to a commercial cloud with at least one other cloud provider to satisfy special mission needs. The next highest rated solution, predominantly

JEDI Cloud from multiple contractors, met only three of the eight objectives. Based on the objectives of the program, technical analysis of the alternatives, and market research, the CCPO recommended acquiring the JEDI Cloud from a single contractor.

DoD witnesses we interviewed differed on who made the decision to award a single ID/IQ contract for the JEDI Cloud. Ms. Lord, the USD(A&S) stated that as of January 2018, when she left the CESG, the group was still debating the pros and cons of a single-award strategy. Mr. Robert Daigle, the Cost Assessment and Program Evaluation (CAPE) Director, told us that sometime in February or March 2018, Deputy Secretary Shanahan decided to proceed with a single award acquisition strategy. However, Deputy Secretary Shanahan told us that although he favored the single-award strategy, he did not recall making the final decision. He also told us that he was in favor of a single-award, single cloud acquisition strategy but with options that would allow the DoD to exit the contract early, if needed. The PCO told us that Ms. Lord made the final decision as the USD(A&S).

While we could not ascertain with certainty who made the final decision, we determined that, as of March 2018, both the CCPO and PCO understood that the DoD would pursue a single-award strategy for the JEDI Cloud. They both also affirmed that strategy in the first draft RFP issued on March 7, 2018, which stated that the contract was a single award ID/IQ contract.

FAR Part 16, "Types of Contracts," Subpart 16.5, "Indefinite-Delivery Contracts," Section 16.504, "Indefinite-quantity contracts," requires two documents to justify awarding a contract over \$112 million to a single contractor. The first is a memorandum from the PCO documenting the decision whether or not to use multiple awards. The second is a "Determination and Findings" (D&F) from the head of the agency determining that one of four exceptions to the preference for multiple awards is applicable.

We discuss below the PCO's determination that a single award was appropriate, Ms. Lord's authorization to award the JEDI Cloud contract to a single source, and the rationale that supported these determinations.

Contracting Officer's Determination. FAR 16.504 requires contracting officers, such as the PCO, to give preference to multiple awards to two or more contractors of ID/IQ contracts under a single solicitation for similar supplies or services.³³ However, FAR 16.504 states that that contracting officer "must not use the multiple award approach" if any one of the following six conditions exists.

1. Only one contractor is capable of providing performance at the level of quality required because the supplies or services are unique or highly specialized.
2. Based on the contracting officer's knowledge of the market, more favorable terms and conditions, including pricing will be provided if a single award is made.
3. The expected cost of administration of multiple contracts outweighs the expected benefit of making multiple awards.
4. The projects task orders are so integrally related that only a single contractor can reasonably perform the work.

³³ FAR 16.504(c)(1)(i).

5. The total estimated value of the contract is less than the simplified acquisition threshold.
6. Multiple awards would not be in the best interests of the Government.³⁴

FAR 16.504 also requires the contracting officer to document the decision in the acquisition plan or contract file.³⁵

On July 17, 2018, the PCO signed the “Memorandum for the Contracting Officer File, Rationale for Single-Award Indefinite Delivery/Indefinite Quantity (ID/IQ) Contract,” documenting her rationale for recommending the award of a single ID/IQ contract. The PCO cited conditions two, three, and six of FAR 16.504 as the reasons for not using a multiple award approach for the JEDI Cloud procurement.³⁶

For condition two, the PCO determined that for the JEDI cloud procurement, a contractor would have to make a significant investment in resources, development, and accreditation to meet the DoD’s requirements for classified and tactical edge solutions. The PCO stated that in a single award scenario, the contractor would receive all the task orders, thereby ensuring recovery of the initial investment and fulfillment of the DoD’s needs. She stated that under a multiple award approach, the DoD expects contractors to propose higher prices to recoup their initial investment and compensate for the likelihood that they would win fewer task orders. Therefore, the PCO concluded that based on her knowledge of the market, more favorable terms and conditions, including pricing, would be provided if a single award for JEDI was made.

For condition three, the PCO stated in her memorandum that in a multiple award scenario, competition and source selection for each task order would require significant work from multiple acquisition and programming personnel. The PCO stated that, for example, a single task order could take up to a year to complete, creating delays to access cloud services for warfighters. She calculated that the estimated cost of administering and executing a task order as \$127,851.84 in a multiple award scenario and \$2,595.71 in a single award scenario. She stated that over the potential 10-year contract, estimating 4,032 task orders per year, the DoD could save in excess of \$500 million in contract administrative costs under a single-award contract. Therefore, the PCO concluded that the expected cost of administering multiple contracts outweighed the expected benefit of making multiple awards.

For condition six, the PCO stated that based on the current state of technology, multiple awards would increase security risks; create impediments to operationalizing data through data analytics, machine learning, and artificial intelligence; and introduce technical complexity that could jeopardize successful implementation and increase costs. The PCO also stated that in a multiple award scenario, DoD data and applications must be connected and secured across multiple clouds, requiring technically complex manual configurations subject to human error and security vulnerabilities. She stated that managing the manual configurations requires additional time and expertise, increasing costs to DoD. Additionally, the PCO stated that multiple awards would prevent the DoD from consolidating and pooling data to leverage data analytics, artificial intelligence and machine learning. She also determined that multiple awards increased the technical complexity of the JEDI Cloud due to the manual

³⁴ FAR 16.504(c)(1)(ii)(B).

³⁵ FAR 16.504(c)(1)(ii)(C).

³⁶ FAR 16.504(c)(1)(ii)(B).

configurations and continuous management required to connect and secure multiple clouds, decreasing the likelihood of successful implementation. Therefore, the PCO concluded in her memorandum that multiple awards would not be in the best interests of the Government.³⁷

Although the FAR does not require the PCO to maintain any documentation supporting the conclusions included in the memorandum, we requested any available documentation that supported the PCO's calculations and analysis. However, the PCO did not provide us any such documentation. She told us that the estimates and statements included in the memorandum were based on the contracting team's professional experience.

Head of Agency Determination. To award an ID/IQ task order contract over \$112M to a single source, 10 U.S.C. §2304a (2018) requires the head of the agency to determine in writing that one of the following four exceptions applies:³⁸

1. The task orders expected under the contract are so integrally related that only a single source can reasonably perform the work.
2. The contract provides only for firm-fixed price task orders for products for which unit prices are established in the contract, or services for which prices are established in the contract for the specific tasks to be performed.
3. Only one source is qualified and capable of performing the work at a reasonable price to the Government.
4. It is necessary in the public interest to award the contract to a single source due to exceptional circumstances.³⁹

On July 19, 2018, the USD(A&S), Ms. Lord, signed the "Determination and Findings for Authority to Award a Task Order Contract to a Single Source" documenting her rationale for authorizing the award of the JEDI contract to a single source.⁴⁰ Ms. Lord cited exception two of 10 U.S.C. § 2304a (2018) as the

³⁷ See Appendix C for the PCO's memorandum.

³⁸ 10 U.S.C. § 2304a(d)(3) (2018) is implemented by FAR 16.504(c)(1)(ii)(D)(1). The threshold has been adjusted for inflation from \$100 million in 2008 to \$103 million in 2010 and then to \$112 million in 2015 in the FAR.

³⁹ In January 2019, the Advisory Panel on Streamlining and Codifying Acquisition Regulations concluded that FAR 16.504(c)(1) is contradictory because it first delegates responsibility for determining the number of awardees to the contracting officer, then reserves the determination for a higher authority. The panel recommended revising the statutory requirement to obtain head of the agency approval for single source task order or delivery order contracts exceeding \$112 million, and repealing FAR 16.504(c)(1).

⁴⁰ 10 U.S.C. § 2304a(d)(3) (2018) is implemented by FAR 16.504(c)(1)(ii)(D)(1). Defense Federal Acquisition Regulation Supplement (DFARS) Part 216, "Types of Contracts," Subpart 216.5, "Indefinite-Delivery Contracts," Section 216.504, "Indefinite-quantity contracts," Subsection 216.504(c)(1)(ii)(D)(1) states that "the authority to make the determination authorized in FAR 16.504(c)(1)(ii)(D)(1) shall not be delegated below the level of the senior procurement executive." DFARS Part 202, "Definitions of Words and Terms," Part 202.1, "Definitions," Section 202.101 states that "senior procurement executive" means, for the DoD (including the defense agencies),

reason for her determination.⁴¹ The D&F stated that the JEDI Cloud contract would provide only for firm-fixed-price task orders for services for which prices are established in the contract for the specific tasks to be performed. According to the D&F, the cloud service offerings would be priced by catalogs resulting from full and open competition, enabling competitive forces to drive all aspects of the firm-fixed pricing. The D&F further stated that the catalogs would then be incorporated into the contract at award and cover the full potential 10 years. Furthermore, Ms. Lord determined that the special contract clauses allowing for new cloud services to be added to the contract *after* contract award would still result in firm-fixed prices for all cloud services under the contract.⁴²

In addition, on July 19, 2018, Ms. Lord signed the JEDI Cloud Acquisition Strategy that described how the CCPO would manage the acquisition and documented the acquisition approach and underlying rationale for the JEDI Cloud.

Ms. Lord told us that she had not been intimately involved in the JEDI Cloud procurement since January 2018. She said that the D&F was drafted by others. She further said that she was briefed by DoD Deputy General Counsel on its content, and she was presented the D&F for signature in July 2018. She said that she was not provided any written legal analysis or justification for the determination made, but relied on the verbal advice of Michael Glennon, Deputy General Counsel, Acquisition and Logistics, DoD Office of General Counsel, on selecting the most fitting exception under 10 U.S.C. § 2304a(d)(3) (2018) to the preference for multiple awards.

After reviewing other acquisitions, we confirmed that it is not unusual for Ms. Lord's staff, in conjunction with the DoD Office of General Counsel and the program contracting officials, to draft the D&F without her input and then brief her on the content and obtain her signature.

Mr. Glennon told us that neither he nor anyone in the Office of General Counsel prepared any documentation that supported the D&F conclusion that the JEDI Cloud contract will provide only firm-fixed-price task orders. He told us that in conversation with Ms. Lord, he expressed his opinion that the D&F conclusion was legally sufficient. He stated that the exception to the preference for multiple awards cited in the D&F was supported by the fact that all task orders would be firm-fixed price. Mr. Glennon also said that there is nothing in the statute or the corresponding implementing regulations that states when the prices in the contract need be established. He stated that regardless of whether the service was established at the time of contract award or added later through the new services clause, as long as the service was added to the catalog at a firm-fixed price, all subsequent task orders would be at a firm-fixed price.

We also noted that, in contrast to the DoD's D&F, the D&F for the CIA's C2S contract relied on a different exception. The CIA's D&F stated that task orders under its contract would be so integrally

the Under Secretary of Defense (Acquisition, Technology, and Logistics). USD(AT&L) is now USD(R&E) and USD(A&S), see footnote 6.

⁴¹ 10 U.S.C. § 2304a(d)(3)(B)(ii) (2018).

⁴² The CIA's C2S contract also includes a special contract clause that allows for the acquisition of new products or services from the contractor not provided in the Cloud Service Catalog Price List at time of contract award. The C2S Statement of Objectives stated the contractor regularly offering new services ensures that the IC's customers have access to the innovation originating in the commercial marketplace.

related that only a single source could reasonably perform the work (exception one).⁴³ We asked Mr. Glennon why that exception and the other exceptions to 10 U.S.C. § 2304a(d)(3) (2018) did not apply to the JEDI Cloud procurement. Mr. Glennon stated that the DoD concluded that more than one contractor could reasonably perform the work, thus eliminating the use of the same exception used for C2S.⁴⁴ He also stated that the fact that multiple contractors were competing for the contract meant that more than one source was qualified and capable of performing the work at a reasonable price to the Government, precluding the use of exception three.⁴⁵ Mr. Glennon added that using the “exceptional circumstances” allowance (exception four) was difficult to justify when the statute provides other applicable exceptions and therefore it was rarely used.⁴⁶

As noted above, although the FAR does not require that documentation be maintained to support the D&F, we asked Ms. Lord and Mr. Glennon to provide any documentation that supported the analysis performed to determine which exception, if any, applied to the JEDI Cloud procurement. They both told us that the D&F was the only document they had.

c. Pre-Award Protests to the JEDI Cloud Contract

In its August 6, 2018, pre-award protest with the Government Accountability Office (GAO), Oracle asserted that the contracting officer’s rationale for a single award lacked merit and that her conclusions were not sufficient to override the FAR’s preference for multiple awards. Oracle also asserted that the D&F improperly used the firm-fixed-price exception because the JEDI Cloud contract would not establish prices for all services, including new and future services, for all 10 years and did not identify the specific tasks to be performed at the time of award. Additionally, Oracle asserted that DoD’s intent to award the JEDI contract to a single contractor was contrary to industry best practices that favored using the services of multiple cloud service providers.⁴⁷

On November 14, 2018, the GAO rejected Oracle’s protest of the single award determination. The GAO found that “the contracting officer’s determinations regarding each of the three applicable conditions to be reasonable.” The GAO also declined to find the D&F inconsistent with the requirements of 10 U.S.C. § 2304a (2018) or FAR 16.504. The GAO stated that “Oracle’s argument would effectively preclude the award of a significant portion of IDIQ contracts--particularly those that employ a statement of objectives, and similarly preclude any modifications to single-award IDIQ contracts.”

On December 6, 2018, Oracle filed a Bid Protest Complaint with similar assertions in the U.S. Court of Federal Claims (COFC). On July 26, 2019, the court also found the contracting officer’s rationale for recommending a single-award ID/IQ contract to be reasonable. However, the court stated that the D&F was flawed in that it “does not accurately reflect the structure of the JEDI Cloud solicitation.” The court stated that “in an ordinary reading [of 10 U.S.C. 2304a(d)(3) (2018)], prices for

⁴³ 10 U.S.C. § 2304a(d)(3)(A) (2018).

⁴⁴ 10 U.S.C. § 2304a(d)(3)(A) (2018).

⁴⁵ 10 U.S.C. § 2304a(d)(3)(C) (2018).

⁴⁶ 10 U.S.C. § 2304a(d)(3)(D) (2018).

⁴⁷ “How to Plan for a Multi-Cloud World,” Harvard Business Review, April 6, 2017 available at <https://hbr.org/sponsored/2017/04/how-to-plan-for-a-multi-cloud-world>. We discuss the lack of cloud technology proficiency among DoD’s workforce in Section III.1.a.

specific services must be “established” at the time of contracting. Prices for new, additional services to be identified and priced in the future, even if they may be capped in some cases, are not, by definition, fixed or established at the time of contracting.” However, the court also acknowledged the “tension” created by ruling that the contracting officer’s rationale for recommending a single-award ID/IQ contract was reasonable, but the D&F authorizing a single award was flawed. The court explained that “this peculiar state of affairs is an artifact of a code section which is a mixture, rather than an alloy, of various pieces of legislation.”

Nevertheless, the court concluded that Oracle could not demonstrate prejudice as a result of the D&F because, regardless of a single- or multiple-award contract, Oracle would have been excluded from competition because Oracle admitted to the court that it could not meet one of the gate criteria, DoD’s minimum technical and security requirements for the JEDI Cloud.⁴⁸ The court concluded that the gate criteria were unrelated to the single award determination and stated that “under any scenario, Oracle would be out of competition.” Therefore, the court ruled in favor of the DoD.

d. OIG Conclusions – The DoD’s Decision to Award the JEDI Cloud Contract to a Single Source

We concluded that the process the DoD used to make the single-award decision was consistent with applicable law and acquisition standards. Based on our interviews with the relevant DoD officials and review of the market research information, we determined that the DDS conducted market research in compliance with FAR Part 10 and that the market research data informed the DoD’s decision. The CESG coordinated with DoD Components and learned about their cloud computing needs and efforts to help determine the best approach to successfully acquire enterprise cloud services. In addition, DoD officials met with Intelligence Community officials and considered the Intelligence Community’s experiences with acquiring and using an enterprise cloud. DoD officials also requested information from, and met with, contractors to learn their capabilities, presented them with information about the proposed procurement, and responded to their questions in accordance with FAR Part 10, Market Research.

The PCO determined that a single award was required because three of the six conditions prohibiting use of multiple awards applied to the JEDI Cloud procurement: 1) based on the contracting officer’s knowledge of the market, more favorable terms and conditions, including pricing would be provided if a single award was made; 2) the expected cost of administration of multiple contracts outweighed the expected benefit of making multiple awards; and 3) multiple awards would not be in the best interests of the Government.⁴⁹

Based on our interviews with relevant DoD officials and review of the relevant Federal regulations, DoD policies, and contracting documentation, we concluded that the PCO’s rationale for awarding a single contract was consistent with the authority granted to the PCO in FAR Part 16. We determined that the PCO’s single award determination considered the scope and complexity of the contract requirements, the expected duration and frequency of task orders, and the mix of resources a contractor must have to perform the expected task order requirements, as required by FAR

⁴⁸ We discuss the gate criteria in the below report section, “Development of JEDI Request for Proposals Requirements.”

⁴⁹ FAR 16.504(c)(1)(ii)(B).

16.504(c)(1)(ii)(A). We concluded that the PCO's determination that a single-award contract was required for the JEDI Cloud under FAR 16.504(c)(1)(ii)(B) was reasonable. Furthermore, we noted that the GAO and the COFC also found the PCO's rationale for recommending the award of a single contract was reasonable.

Regarding the D&F, based on our interviews with DoD and CIA officials and review of the contracting documentation, we concluded that Mr. Glennon's legal advice regarding the firm-fixed-price exception under 10 U.S.C. 2304a(d)(3) (2018) was not inconsistent with the statute. The GAO also did not find the D&F inconsistent with the statutory requirements.⁵⁰ We recognize that the U.S. Court of Federal Claims concluded differently, stating that the term "established" meant "at the time of" entering the contract. However, the court also concluded that Oracle could not demonstrate prejudice as a result of the D&F because, regardless of a single- or multiple-award contract, Oracle would have been excluded from competition for failing to meet the gating requirement. Both statutory interpretations are the subject of an appeal before the U.S. Court of Appeals for the Federal Circuit, which will likely rule on this issue.

Finally, neither the FAR nor DoD policy requires supporting documentation, other than the PCO's memorandum and the D&F, of the analysis performed to support the conclusions regarding the determination of contract type and the preference for multiple awards. However, the United States Code and the FAR emphasize the significance of these determinations by requiring the Head of the Agency to make and document those decisions for contracts that exceed \$112 million. Although the DoD complied with these requirements, we are concerned with the lack of documented analysis supporting these decisions, particularly given the size and the likely scrutiny of the JEDI Cloud contract. The PCO, Ms. Lord, and the DoD OGC stated that they did not prepare or maintain any written communication, including e-mails, memorandums, or notes that memorialized the analysis or evidenced review of the recommendations made for the decision to use the firm-fixed-price exception under 10 U.S.C. § 2304a(d)(3)(B) (2018) to use a single-award contract for the JEDI Cloud procurement.

e. Recommendation 1.

We recommend that the Acting Director for Contract Policy, Defense Pricing and Contracting, consider developing and implementing appropriate policy to require some level of documentation and analysis supporting key acquisition decisions, including any legal reviews and advice, for contracts that exceed the \$112 million threshold established by statute.

Management Comments Required. The Acting Director for Contract Policy, Defense Pricing and Contracting did not respond to the recommendation in the report. Therefore, the recommendation is unresolved. We request that the Acting Director for Contract Policy, Defense Pricing and Contracting provide comments on this final report.

2. JEDI Cloud Requirements

The JEDI Cloud requirements development process included many decisions that resulted in the development of a Request for Proposals (RFP). An RFP outlines the Government's requirements or needs, the proposed contract structure, and the proposal submission instructions and evaluation

⁵⁰ 10 U.S.C. § 2304a(d)(3)(B) (2018).

process. We reviewed the DoD's development of the JEDI Cloud requirements and analyzed the DoD's rationale for including the gate criteria within the RFP. The DoD Source Selection Procedures state that a solicitation may prescribe minimum "pass/fail" gate criteria that a contractor must meet before advancing in the proposal evaluation process.⁵¹

In this area, we reviewed allegations from members of Congress and IBM that the JEDI Cloud RFP required contractors to meet unduly restrictive DoD requirements for cloud security, such as Impact Level-6 (IL-6) security requirements. In addition, we reviewed IBM's GAO protest assertion that the JEDI RFP improperly sought noncommercial items, and the Procuring Contracting Officer's (PCO's) determination that the JEDI Cloud procurement seeks commercial items. In particular, we reviewed statements from Oracle and IBM which asserted that some of the JEDI Cloud RFP gate criteria were improper and unnecessary. We focused our review of the gate criteria on Sub-factor 1.1 (Elastic Usage), Sub-factor 1.2 (High Availability and Failover), and Sub-factor 1.6 (Commercial Cloud Offering Marketplace), which were the main subject of the complaints.

a. Development of DoD's Requirements for the JEDI Cloud

The development of the DoD's requirements for the JEDI Cloud began with Secretary Mattis' efforts to define the strategic problem regarding the DoD's ability to protect its sensitive information. Secretary Mattis told us that he learned about DoD's strategic challenges in the areas of information sharing and data security early in his tenure as the Secretary of Defense from intelligence briefings, industry association executives, and the leaders of a "large number" of companies. Secretary Mattis said that after the DoD's data security and information sharing problem was defined at the strategic level, he directed Deputy Secretary of Defense Shanahan to "solve the problem."

As noted above, on September 13, 2017, Deputy Secretary Shanahan signed the "Accelerating Enterprise Cloud Adoption" memorandum directing DoD senior leaders to accelerate the adoption of enterprise cloud computing technologies and establishing the CESG. The DoD's Joint Requirements Oversight Council, a statutory council to the Chairman of the Joint Chiefs of Staff, typically identifies, approves, and prioritizes joint performance requirements that fill capability gaps across the DoD to meet the National Defense Strategy. On December 22, 2017, the Vice Chairman of the Joint Chiefs of Staff signed the Joint Requirements Oversight Council Memorandum (JROCM) 135-17. The JROCM provided guidance for procuring a cloud solution to support the DoD's needs and stated that a commercial cloud would support the warfighter and DoD business operations. The JROCM emphasized the need for resiliency and explained the importance of having high availability, redundancy, and failover of the cloud computing and storage infrastructures, identifying these characteristics as important to executing warfighting missions. The JROCM directed the CESG to specify the standards it would require for data protection within the cloud.

As additional guidance, Deputy Secretary Shanahan's January 8, 2018 memorandum, "Accelerating Enterprise Cloud Adoption Update," emphasized maximizing security, the ability to scale to meet demand, developing common standards, and taking advantage of competition among contractors. Regarding competition, Mr. Daigle told us that Deputy Secretary Shanahan wanted the JEDI Cloud requirements to be written in a way that would allow for multiple contractors to compete for the contract. Subsequently, Ms. Lord stated in the JEDI Cloud Acquisition Strategy on July 19, 2018 that:

⁵¹ Department of Defense, "Source Selection Procedures," March 31, 2016.

The requirements for JEDI Cloud are derived from three primary sources: the DSD [Deputy Secretary of Defense] Memorandum, dated September 13, 2017, the JROCM 135-17 dated December 22, 2017, and the DSD Memorandum dated January 8, 2018. Collectively, these documents establish that JEDI Cloud must securely and rapidly provide infrastructure and platform services, with a focus on commercial solutions, that support warfighting and business operations. JEDI Cloud must operate at all classification levels and enable data exchange with intelligence and mission partners both [in the] Continental United States and Outside the Continental United States.

The JEDI Cloud acquisition strategy also stated that the Deputy Secretary's memorandums and the JROCM informed the requirements for the JEDI Cloud RFP, including the security-related requirements for the JEDI Cloud. The CCPO developed the following nine requirements for the JEDI Cloud RFP.

- Factor 1: Gate Criteria, required a description of the contractor's approach to seven minimum gate requirements.
- Factor 2: Logical Isolation and Secure Data Transfer, required a description of the contractor's approach to achieve secure data transfer across data classification domains, logical isolation architecture, and classified data processing and different classification levels.
- Factor 3: Tactical Edge, required a description of the contractor's approach to providing tactical edge compute and storage capabilities, including durable, portable compute and storage devices and modular, rapidly deployable data centers.
- Factor 4: Information Security and Access Controls, required a description of the contractor's approach for information security and access controls.
- Factor 5: Application and Data Hosting and Portability, required a description of the contractor's approach to application and data hosting and portability, including rapid provisioning of virtual machines and exporting all data and object storage.
- Factor 6: Management and Task Order 001, required a description of the contractor's approach to managing a program of this depth and magnitude, timely remediation of issues, risk management process, Quality Assurance Surveillance Plan, and property management system.
- Factor 7: Small Business Participation Approach, required documentation of the contractor's approach to meet the small business participation goals.
- Factor 8: Demonstration, required a live demonstration of the contractor's approaches to executing Factors 2-6.
- Factor 9: Price, required a summary of the contractor's pricing proposal, price information and supporting data for each of six price scenarios, and priced catalogs for all cloud service offerings.

b. Gate Requirements

The DoD Source Selection Procedures state that a solicitation may prescribe minimum “pass or fail” gate criteria that a contractor’s proposal must meet before advancing in the proposal evaluation process. For the JEDI Cloud procurement, contractors were required to successfully demonstrate seven gate evaluation criteria, detailed in Factor 1, Gate Criteria, Sub-factors 1.1 through 1.7. Section M2 of the RFP stated that if a contractor received a rating of “unacceptable” under any of the gate criteria, the proposal would not be further evaluated and therefore would not be considered for contract award. We include details about the sub-factors in Appendix F of this report.⁵²

The letter from U.S. Representatives Womack and Cole, the complaints from IBM and Oracle to the GAO, and the complaint from Oracle to the COFC asserted that the JEDI Cloud RFP gate evaluation criteria were overly restrictive. Their assertions complained about some of the sub-factors but did not specifically challenge the four gate criteria related to commerciality, independence, automation, and data (Sub-factors 1.3, 1.4, 1.5, and 1.7). We interviewed DoD officials and reviewed the DoD’s justification for those four sub-factors. We also confirmed that each proposal evaluated by the DoD included documentation to assert compliance with the gate criteria, and that none of the proposals were excluded due to an unacceptable rating for Sub-factors 1.3, 1.4, 1.5, or 1.7.⁵³ Based on our review of the information available to us, we found that the DoD’s inclusion of Sub-factors 1.3, 1.4, 1.5, or 1.7 was reasonable and that the sub-factors did not overly restrict competition.

In contrast, the assertions in the complaints raised specific issues with gate criteria related to elastic usage, high availability and failover, and commercial cloud offering marketplace (Sub-factors 1.1, 1.2, and 1.6). We provide our analysis and conclusions regarding these three sub-factors in the following sections.

Sub-factor 1.1 - Elastic Usage

Rapid elasticity is the capability of a cloud to rapidly scale up and down computing capabilities in accordance with the customer’s demand. According to National Institute of Standards and Technology (NIST) Special Publication (SP) 500-322, “Evaluation of Cloud Computing Services Based on NIST SP 800-145” (2018), rapid elasticity is an essential characteristic to cloud computing that allows computing capabilities to be appropriated in any quantity at any time. The DoD Cloud Strategy stated that by implementing a scalable solution, mission owners would gain significant efficiencies in the execution of mission capabilities and cyber operations by fully embracing the dynamic elasticity of commercial cloud architecture. The strategy also stated that the reporting of elastic usage would eventually improve the Government’s budgeting, billing, and payment practices by providing detailed resource usage reports for all mission owners.

The JEDI Cloud RFP Sub-Factor 1.1 required each contractor to provide a report for the months of January and February 2018 showing that JEDI Cloud usage would not represent a majority (greater than 50 percent) of the contractor’s network, compute, and storage usage. The CCPM told us that the

⁵² See Appendix G, *Request for Proposals Section M: Evaluation for Award*.

⁵³ IBM and Oracle were not evaluated on Sub-factors 1.3, 1.4, 1.5 and 1.7 because they were eliminated from competition due to an unacceptable rating on earlier sub-factors.

DoD included elastic usage as a gate requirement to ensure that the JEDI Cloud was capable of providing service even when there was an unexpected increase in users during a major conflict or natural disaster.

We reviewed information from the CIA and determined that the JEDI Cloud RFP's use of Sub-factor 1.1 as gate criteria was consistent with a similar mandatory qualification item used in the C2S solicitation to require Infrastructure as a Service (IaaS) services with the ability to scale an application beyond the capacity of a single physical server.

In addition, the DDS Deputy Director told us that to ensure the JEDI Cloud "experiences ongoing innovation and development and capability advancements for the full potential period of performance," Sub-factor 1.1 limited the amount of JEDI Cloud usage to 50 percent of the contractor's total commercial usage. He stated that a key objective of the JEDI Cloud acquisition strategy was to achieve ongoing commercial parity so that the DoD could take advantage of commercial advancements in cloud technology. The DDS Deputy Director told us that by ensuring that the contractor's customer base remained primarily commercial customers, the contractor would be compelled to innovate its cloud offerings to compete globally and satisfy the demands of its commercial customers.

On September 6, 2018, Oracle filed its revised and consolidated supplemental pre-award protest to the GAO, alleging that Sub-factor 1.1 exceeded DoD's minimum needs and unduly restricted competition. In its decision on November 14, 2018, the GAO did not discuss Sub-factor 1.1 in detail but stated that it had "considered all of Oracle's various challenges" to the JEDI Cloud RFP and found "no merit in any of Oracle's allegations."

On December 6, 2018, Oracle filed its pre-award protest with the U.S. Court of Federal Claims, again alleging that Sub-factor 1.1 exceeded the DoD's minimum needs and unduly restricts competition. In its decision on July 26, 2019, the court found that Sub-factor 1.1 was enforceable as a minimum need of the DoD.

Based on our review of NIST SP 500-322 and the DoD Cloud Computing Strategy, we concluded that the DoD's inclusion of Sub-factor 1.1, Elastic Usage, aligns with NIST's definition of the essential characteristics of cloud computing and the DoD's strategy for cloud computing. Additionally, based on our review of the RFP, the Justification for Factor 1 Gate Criteria memorandum, and interviews with the DDS Deputy Director and the CCPM, we determined that DoD's rationale for the Sub-factor 1.1 requirements to help meet the fluctuating demands of the warfighter and the business of defense, as well as help ensure that the cloud contractor continues to innovate over time, were reasonable.

Sub-factor 1.2 – High Availability and Failover

On December 8, 2011, the Office of Management and Budget issued a memorandum directing Federal agencies procuring commercial and non-commercial clouds to require cloud service providers (CSPs) to comply with Federal Risk and Authorization Management Program (FedRAMP) security authorization requirements.⁵⁴ The FedRAMP security requirements include access controls, identification authentication, and system monitoring, among others. FedRAMP authorizes Commercial

⁵⁴ The FedRAMP Program Management Office mission is to promote the adoption of secure cloud services across the Federal Government by providing a standardized approach to security and risk assessment.

Cloud Offerings (CCOs) as having a low, moderate, or high impact level, based on the classification of the data processed, stored, and transmitted on the cloud.⁵⁵ A FedRAMP Moderate rating indicates that the Cloud Service Offering (CSO) impact level is moderate and the loss of confidentiality, integrity, and availability would result in serious adverse effects on an agency's operations, assets, or individuals. Additionally, in 2012, the DoD CIO issued the "DoD Information Enterprise Architecture Core Data Center Reference Architecture" guidance that recommended that core data center continuity of operations and disaster relief sites must be at least 150 miles apart and must provide real-time, mirror backup.

The JEDI Cloud RFP Sub-factor 1.2 required contractors to demonstrate high availability and failover of their data centers containing the physical hardware used to provide IaaS and Platform as a Service (PaaS) CCOs. The RFP also required contractors to have at least three existing unclassified CCO data centers within the United States, supporting at least one IaaS offering and one PaaS offering that were FedRAMP Moderate "Authorized." The data centers must also be capable of automatically shifting compute, network, and storage services to each other if one data center failed without introducing security risks to the DoD. The RFP also required that each of the three data centers be geographically dispersed and separated by at least 150 miles. In addition, contractors were required to demonstrate global network availability, built-in data storage with protection against data loss, and automatic monitoring of resource use and service degradation.

The DDS Deputy Director told us that each of the data centers had to support at least one IaaS and one PaaS CCO that were FedRAMP Moderate "Authorized" to demonstrate the contractor's ability to comply with the FedRAMP security requirements. In a memorandum documenting the justification for the seven Sub-factors, the DDS Deputy Director stated that the data centers must be at least 150 miles apart to ensure that the JEDI Cloud could provide continuity of services for the DoD in case a human or natural disaster caused a data center to fail. He also stated that high availability and failover requirements are long standing within the DoD, particularly around the critical infrastructure that supports warfighters. Moreover, he stated that the JEDI Cloud will host warfighter applications and data, and therefore must be able to provide high availability, failover, and data redundancy to continuously support the warfighter. Finally, the DDS Deputy Director stated that to meet this requirement, three data centers that are sufficiently dispersed are necessary to provide reliability and resiliency of services even in the unlikely circumstance that two datacenters are simultaneously affected.

On September 6, 2018, Oracle filed its revised and consolidated supplemental pre-award protest to the GAO, asserting that Sub-factor 1.2 exceeded DoD's minimum needs and unduly restricted competition. During the GAO protest proceedings, the DoD defended its use of Sub-factor 1.2, stating that "FedRAMP Moderate is the Federal cloud computing standard and represents the Department's minimum security requirements for processing or storing DoD's least sensitive information." The DoD also stated that the RFP allowed the contractor 30 days to meet the more stringent requirements of the JEDI Cloud Cyber Security Plan and "having the FedRAMP Moderate authorization upon proposal submission significantly mitigates the risk" that the contractor would be unable to meet the more rigorous requirements.

⁵⁵ A FedRAMP Moderate authorization represents a contractor's ability to meet the DoD's minimum cloud security standards and meets the DoD's lowest authorization level required to process, store, or transmit unclassified DoD data.

On November 14, 2018, the GAO denied Oracle's protest, stating that the DoD "clearly articulated a reasonable basis" for Sub-factor 1.2 and that Oracle's complaints were "without merit."

On December 6, 2018, Oracle filed its pre-award protest with the U.S. Court of Federal Claims, again alleging that Sub-factor 1.2 exceeded DoD's minimum needs and unduly restricted competition. In its decision filed on July 26, 2019, the court found that Sub-factor 1.2 was enforceable as a minimum need of the DoD.

Based on our review of FedRAMP policy and the "DoD Information Enterprise Architecture Core Data Center Reference Architecture," we concluded that the DoD's inclusion of Sub-factor 1.2, High Availability and Failover aligns with the minimum security requirements required for Federal use of a commercial cloud and data center architecture. Additionally, based on our review of the RFP, the Justification for Factor 1 Gate Criteria memorandum, and interviews with the DDS Deputy Director and the CCPM, we concluded that DoD's rationale for the Sub-factor 1.2 requirements to help meet the security requirements of the JEDI Cloud and continuity of services, were reasonable.

Conflicting FedRAMP Guidance. FedRAMP guidance states that Federal agencies can require a FedRAMP authorization as a condition of the contract award if there are an adequate number of contractors to allow for effective competition. However, when Oracle challenged Sub-factor 1.2, conflicting FedRAMP guidance was simultaneously available on the FedRAMP website. This conflicting guidance stated, "Federal Agencies cannot require CSPs to be FedRAMP authorized as part of their RFP, but can state that a CSP needs to be FedRAMP authorized once Federal data is placed in the system." This guidance conflicted with the JEDI Cloud RFP because Sub-factor 1.2 required contractors to have three data centers with at least one IaaS and one PaaS CCO that were FedRAMP Moderate authorized at the time of proposal submission.

We interviewed FedRAMP officials for clarification on the FedRAMP guidance. The response from the FedRAMP officials made three main points. First, FedRAMP officials told us that FedRAMP does not have the authority to create binding acquisition policy, and that guidance documents available on its website only represent best practices. Second, FedRAMP officials stated that a Federal Agency could require a FedRAMP authorization at the time of proposal if there was an adequate number of contractors that met the RFP's requirements to allow for effective competition. Third, FedRAMP officials stated, "the soliciting agency determines what is meant by 'an adequate number of vendors to allow for effective competition'." FedRAMP officials also stated that the guidance, "Federal Agencies cannot require CSPs to be FedRAMP authorized as part of their RFP," was removed from the FedRAMP website as of July 19, 2019, because it was no longer current guidance.

To assess these challenges to Sub-factor 1.2, we reviewed the JEDI Cloud RFP and supplemental documents, including the JEDI Cyber Security Plan and Justification for Gate Criteria Memo. We also reviewed DoD Instruction 8500.01, "Cybersecurity," March 14, 2014, the DoD Cloud Computing Security Requirements Guide (SRG), and the FedRAMP cloud authorization information. FedRAMP guidance allows Federal Agencies to require a FedRAMP authorization as a condition of contract award and the Cloud Computing SRG requires a FedRAMP Moderate authorization as part of the minimum standards for cloud use in the DoD. Therefore, based on our review, we concluded that the DoD's sub-factor 1.2 requirement of a FedRAMP Moderate authorization at the time of proposal submission was consistent with current FedRAMP guidance.

Sub-factor 1.6 – Commercial Cloud Offering Marketplace.

(FOUO SSI) According to NIST SP 800-145, “The NIST Definition of Cloud Computing,” September 2011, on-demand, self-service is an essential characteristic for cloud computing that allows a user to acquire and use cloud capabilities as needed automatically without requiring human interaction with each service provider.” On March 27, 2018, the DoD CCPO completed the JEDI Cloud Market Research Report and found that

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The JEDI Cloud RFP required contractors to demonstrate that their existing CCO included an easy-to-use online marketplace to deploy CCO and third-party platform and software service offerings onto the CCO infrastructure. According to the DDS Deputy Director, modern cloud computing has reduced the time to select and configure new systems for deploying custom applications and third-party software through marketplaces. He stated that an easy to use marketplace was crucial to the rapid adoption of cloud infrastructure.

(FOUO SSI) In its September 6, 2018 revised and consolidated supplemental pre-award protest to the GAO, Oracle asserted that Sub-factor 1.6 exceeded the DoD’s needs and that a marketplace “is not a typical cloud computing offering for most vendors.” However, on October 12, 2018, the DoD received complete proposals in response to the JEDI Cloud RFP from Oracle, IBM, Microsoft, and Amazon. Each of these proposals included a submission stating that the contractors met Sub-factor 1.6.

On November 14, 2018, the GAO denied Oracle’s protest challenging the requirements of Sub-factor 1.6. The GAO stated, “Based on Oracle’s own response to the agency’s RFI, it appears that Oracle’s protest is challenging a solicitation requirement that is not prejudicial to Oracle. Regardless, we find nothing unreasonable in the agency’s explanation for this requirement, and Oracle’s protest challenging the requirements of subfactor 1.6 is denied.”

(FOUO SSI) Based on our review of NIST SP 800-145, the JEDI Cloud RFP, the Market Research Report, the Justification for Factor 1 Gate Criteria memorandum, and interviews with the DDS Deputy Director and the CCPM, we concluded that the requirement for Sub-factor 1.6 was in alignment with NIST’s definition of the essential characteristics of cloud computing and common commercial cloud offerings.

Based on our review, we concluded the inclusion of Sub-factor 1.6 Commerciality in the JEDI RFP was reasonable.

⁵⁶ According to the JEDI Cloud Market Research Report, the DoD defined the “marketplace” as any availability by a user to install or use a service on the cloud infrastructure.

c. Other JEDI Cloud RFP Requirements Complaints

The letter from U.S. Representatives Womack and Cole and the complaints from IBM and Oracle to the GAO also raised additional issues with the JEDI Cloud RFP requirements. In particular, they alleged that the JEDI Cloud RFP requirements were designed around the security capabilities of a specific cloud provider and that the DoD improperly used FAR Part 12, “Acquisition of Commercial Items” to acquire non-commercial, classified cloud services.

Security Impact Levels

In an October 22, 2018 letter to the OIG, Representatives Womack and Cole raised concerns about the RFP’s “gating or restricting provisions” that seemed to be tailored to one specific contractor that the Representatives did not identify. On September 6, 2018, Oracle made a similar allegation in its supplemental complaint to the GAO. For example, the Representatives referred to “the requirement that the Cloud Service Provider meets the Defense Information Systems Agency Impact Level 6. Currently, this unnecessary requirement, along with many others, can only be met by one specific contractor.”

The DoD Cloud Computing SRG outlines cloud security requirements for the use of cloud computing across the DoD enterprise.⁵⁷ According to the Cloud Computing SRG, the Defense Information Systems Agency (DISA) is responsible for granting the DoD’s provisional authorizations for commercial cloud offerings (CCOs) at four information impact levels (IL) based on the criticality and sensitivity of the data stored, processed, or transmitted within a cloud.⁵⁸ The Cloud Computing SRG requires an IL-6 provisional authorization for CCOs that store, process, or transmit data up to the Secret classification level. DoD authorizing officials use these provisional authorizations to grant DoD systems the authorization to operate within a cloud. DISA maintains the DoD Cloud Service Catalog, a list of all CCOs that have been granted a DoD provisional authorization. As of December 2018, Amazon Web Services was the only contractor granted an IL-6 authorization.

We reviewed the JEDI Cloud RFP and found that it did not include a gate criteria that required a contractor to meet the IL-6 security requirements; rather, the RFP Statement of Objectives required a contractor to have infrastructure capable of meeting security requirements associated with hosting information classified at the Secret level within 180 days of contract award. The contractor’s infrastructure also had to meet security requirements associated with hosting information classified at the Top Secret level, within 270 days of contract award. Additionally, on December 12, 2019, DISA granted Microsoft IL-6 authorizations, demonstrating that more than one contractor was capable of meeting the security requirements.

Classified Services as Commercial Items

In its October 10, 2018, complaint to the GAO, IBM stated that the DoD was improperly seeking non-commercial items under a commercial item contract—specifically, a cloud solution capable of

⁵⁷ DoD Cloud Computing Security Requirements Guide, Version 1, Release 3, March 6, 2017.

⁵⁸ The four impact levels are IL-2 (lowest), IL-4, IL-5, and IL-6 (highest). The National Security Agency grants the authorization for information classified up to the Top Secret level. DISA’s impact levels are similar but not identical to the FedRAMP authorization levels. A CCO must be both FedRAMP approved and DISA approved to be used with the DoD.

supporting classified services at IL-5 and IL-6 security requirements. The complaint also asserted, “These defense mission security requirements have no application in the commercial marketplace.” In addition, IBM asserted that because the JEDI Cloud RFP seeks non-commercial items, the DoD incorrectly issued the RFP under FAR Part 12, “Acquisition of Commercial Items.” In support of this argument, IBM referenced the DoD Cloud Computing SRG, which stated that information processed and stored at IL-5 and IL-6 can only be processed in a DoD or Federal Government cloud.

DISA developed the Cloud Computing SRG for all components within the DoD. SRGs generally outline security requirements applicable to a given technology family, product category, or an organization. According to DISA, SRGs provide non-product specific requirements to mitigate sources of security vulnerabilities commonly encountered across information technology systems and applications.

According to the Cloud Computing SRG, IL-6 CSOs are not considered commercial because the infrastructure of IL-6 authorized CSOs need to be dedicated and separated from other contractor and CSO infrastructures. The SRG also stated that IL-6 offerings are only provided by CSPs under contract with the DoD or a Federal agency. We interviewed DISA officials responsible for the Cloud Computing SRG, who told us that a classified (IL-6) CSO is the same as a CCO, except that it must be in the Secret Internet Protocol Router Network (SIPRNet) enclave, separated from the unclassified cloud service, and must be under contract with the DoD or a Federal agency, unavailable to others. DISA officials also told us that DISA’s intent in the Cloud Computing SRG was to highlight that a contractor was only allowed to sell this service to the Government and not the public.

IBM asserted that when “defense mission security requirements” are applied to a commercial cloud, the cloud becomes a non-commercial item because DoD requirements “have no application in the commercial marketplace.” FAR Part 2, “Definitions of Words and Terms,” Subpart 2.1, “Definitions,” defines commercial items as any item that is customarily used by the public or non-government entities for non-government purposes, and that have been, or are available to be, sold, leased, or licensed to the public. The FAR also states that this definition includes items with minor modifications not customarily available in the commercial marketplace made to meet Federal Government requirements. Furthermore, the FAR specifies that minor modifications are, in part, those that do not significantly alter the non-governmental function of an item.

The JEDI Cloud RFP defines CCOs as the IaaS and PaaS offerings that are publicly-available and currently sold in the commercial marketplace. The PCO told us that using a commercial cloud service in a classified environment is still a commercial cloud service. We spoke with DISA officials, the CCPM, and DDS Deputy Director who confirmed that the additional security modifications required to operate in a classified environment do not change a CCO from commercial to non-commercial.

We concluded that the PCO’s determination that the JEDI Cloud is a commercial item is reasonable and consistent with other agencies’ determinations. Both DISA and the CIA stated that CCOs with minor security modifications for a classified environment are still commercial because the modifications do not change the non-governmental function of the CCO.

d. OIG Conclusions - Development of JEDI Request for Proposals Requirements

Based on our interviews with DoD officials and review of the relevant Federal and DoD policies, contracting documentation, RFP, and litigation filings, we found that the RFP requirements were based

on approved warfighter requirements for resiliency, high availability, redundancy, and failover of cloud computing and storage infrastructures operating at all classification levels, and supporting data exchange with intelligence and mission partners. We concluded that the RFP requirements were reasonable.

We also concluded that the DoD's inclusion of gate requirements, Sub-factors 1.1, 1.2, or 1.6, was reasonable. We concluded that Sub-factor 1.1, Elastic Usage, represented an essential cloud capability. We also determined that each proposal submitted to the DoD included a submission asserting that the contractors met Sub-factor 1.1. We concluded that Sub-factor 1.2, High Availability and Failover, represented a combination of the DoD's needs and compliance with Federal cloud security requirements and FedRAMP guidance. In addition, we concluded that Sub-factor 1.6, Commercial Cloud Offering Marketplace, reflected the DoD's needs and requirements to effectively adopt and use cloud services. Furthermore, we concluded that the gate criteria did not overly restrict competition because we verified that the four completed proposals submitted to the DoD included documentation asserting compliance with all the sub-factors.

In addition, we concluded that the JEDI Cloud RFP did not include a gate criteria that required contractors to meet IL-6 cloud security requirements. Instead, the RFP required the contractor to meet IL-6 security requirements within 180 days of contract award," which complied with DoD cloud security requirements for CCOs that store, process, or transmit data up to the Secret classification level. We concluded that this requirement was reasonable.

Finally, we determined that the JEDI Cloud RFP requirements were consistent with Federal and DoD cloud security requirements. Specifically, as expressed in the Cloud Computing SRG, all cloud computing used by the DoD had to receive the baseline FedRAMP Moderate authorization and a DoD provisional authorization for an information impact level (such as IL-6) consistent with the criticality and sensitivity of the data stored, processed, or transmitted in the cloud. The FAR definition of commercial items includes commercial items with minor modifications not customarily available in the commercial marketplace made to meet Federal Government requirements. As a result, we found the PCO's determination that the JEDI Cloud was a commercial item and eligible for acquisition under FAR Part 12, "Acquisition of Commercial Items" was not improper.

3. Source Selection Process

According to FAR Part 15, "Contracting by Negotiation," Subpart 15.3, "Source Selection," Section 15.302, "Source Selection Objective," the objective of the source selection process is to select the proposal that represents the best value for the Government.⁵⁹ The FAR and Defense Federal Acquisition Regulation Supplement (DFARS) prescribe policies and procedures that govern the source selection process.⁶⁰ In addition, the Defense Pricing and Contracting (DPC) establishes the DoD Source Selection Procedures and documentation requirements for major system acquisitions and competitively

⁵⁹ FAR Part 2, "Definitions of Words and Terms," Subpart 2.1, "Definitions," defines best value as the expected outcome of an acquisition that, in the Government's estimation, provides the greatest overall benefit in response to the requirement.

⁶⁰ FAR Part 15, "Contracting by Negotiation," Subpart 15.3, "Source Selection" and DFARS Part 215, "Contracting by Negotiation," Subpart 215.3, "Source Selection."

negotiated procurements estimated to exceed \$10 million.⁶¹ This process includes pre-solicitation activities, such as development of market research, business case analysis, acquisition strategy, and RFP requirements, discussed above; evaluation and decision activities, including evaluation of proposals and discussions with contractors; and source selection documentation, such as maintaining non-disclosure agreements and evaluation reports. We addressed certain pre-solicitation activities above in our discussion of market research, business case analysis, the single award acquisition strategy, and the RFP requirements development. We discuss the JEDI source selection plan, evaluation and decision, and the source selection documentation in this section.

However, we are prohibited by law from publicly disclosing contractor proposal or Government source selection information.⁶² This prohibition did not restrict our review, but it limits our presentation of information in this report.

a. Pre-solicitation Activities

DoD Source Selection Procedures for conducting competitively negotiated source selections require four pre-solicitation activities: 1) conduct acquisition planning, including market research, development of an Acquisition Plan, and peer reviews; 2) develop the RFP; 3) release the RFP; and 4) develop a Source Selection Plan.⁶³

Conduct Acquisition Planning. FAR 7.102 and the DoD Source Selection Procedures direct the DoD to perform acquisition planning and conduct market research for all acquisitions to promote and provide for the use of commercial items, full and open competition, selection of the appropriate contract type, and appropriate consideration of pre-existing contracts. The DoD conducted market research for the JEDI Cloud and finalized the results, including the use of commercial items and existing contracts, in the Market Research Report on March 27, 2018.⁶⁴ DoD officials, including the Director of the Washington Headquarters Service Acquisition Directorate, the CCPO Program Manager, and the PCO, signed the JEDI Cloud Acquisition Plan on June 28, 2018. The Acquisition Plan described the JEDI Cloud performance objectives, risks, contract type selection, source selection procedures, and

⁶¹ On September 11, 2018, the Defense Pricing/Defense Procurement and Acquisition Policy (DPAP) was renamed as Defense Pricing and Contracting. The JEDI Cloud was competitively solicited pursuant to FAR Subpart 12.6, "Streamlined Procedures for Evaluation and Solicitation for Commercial Items." FAR 12.102 states that the PCO shall use the policies in FAR Part 12, "Acquisition of Commercial Items," in conjunction with the policies and procedures for solicitation, evaluation, and award prescribed in FAR Part 15, "Contracting by Negotiation," as appropriate for the particular acquisition. FAR Subpart 15.3, "Source Selection," prescribes the policies and procedures for selection of a source in a competitively negotiated acquisition. DFARS 215.300, "Scope of subpart," states that contracting officers shall follow the principles and procedures in the "Department of Defense Source Selection Procedures," when conducting negotiated competitive acquisitions using FAR part 15 procedures.

⁶² Sections 2101-07, title 41, U.S.C. (2011), "Procurement Integrity Act," implemented at FAR Part 3, "Improper Business Practices and Personal Conflicts of Interest," Subpart 3.1, "Safeguards," Section 3.104, "Procurement Integrity," Subsection 3.104-4, "Disclosure, protection, and marking of contractor bid or proposal information and source selection information" prohibits any person from disclosing contractor proposal information or source selection information to any person other than a person authorized.

⁶³ We discussed DoD's market research efforts in Section III.1.a and the development of the JEDI Cloud RFP in sections II and III.2, above.

⁶⁴ We discussed DoD's market research efforts in detail in Section III.1.a, above.

anticipated milestones, among other requirements in accordance with FAR 7.105, "Contents of Written Acquisition Plans."

The United States Code requires an acquisition strategy for each major defense acquisition program, each major automated information system, and each major system approved by a milestone decision authority.⁶⁵ FAR 34.004, "Acquisition Strategy," states that the acquisition strategy is the PM's overall plan for satisfying the mission need in the most effective, economical, and timely manner.⁶⁶ DoD Instruction 5000.74, states that the decision authority will be responsible for the review and approval of the acquisition strategy.⁶⁷ The Defense Acquisition Guidebook states that the Acquisition Strategy identifies the acquisition approach and describes the business, technical, and support strategies that the PM plans to employ to manage program risks or opportunities and meet program objectives.

On July 19, 2018, Ms. Lord, USD(A&S), approved the JEDI Cloud Acquisition Strategy, which detailed how the CCPO will manage the acquisition of the JEDI Cloud using an enterprise approach. The Acquisition Strategy included discussions of warfighter requirements for JEDI, the acquisition approach, the program structure and management, the business and contract strategy, technical considerations, and risks in accordance with 10 U.S.C. 2431a, FAR 34.004 and DoDI 5000.74.

The DoD Source Selection Procedures also require pre-award peer reviews in accordance with DFARS 201.170 and the Procedures, Guidance and Information (PGI) 201.170.⁶⁸ According to PGI 201.170, the objective of peer reviews is to ensure that the DoD contracting officers are implementing policy and regulations in a consistent and appropriate manner. It also states that pre-award peer reviews for competitive acquisitions shall be conducted before the issuance of the solicitation, request for final proposal revisions, and contract award. For the JEDI Cloud Procurement, the DPC conducted the following three peer reviews.

- The first peer review was conducted April 23 – 24, 2018. The purpose of the peer review before the issuance of the RFP was "to ensure that the RFP reflected the approved acquisition strategy, had a high probability of delivering the warfighters' requirement and having any protest denied." The peer review team submitted a memorandum for record (MFR) to the PCO describing their findings. In general, the Peer Review team made recommendations to improve the clarity, consistency, and detail of the RFP. The PCO responded to the recommendations with detailed modifications documented in an MFR on July 20, 2018.⁶⁹

⁶⁵ 10 U.S.C. § 2431a (2017).

⁶⁶ FAR Part 34, "Major System Acquisition," Section 34.004, "Acquisition Strategy."

⁶⁷ DoD Instruction 5000.74, "Defense Acquisition of Services," January 5, 2016, (Incorporating Change 1, October 5, 2017).

⁶⁸ DFARS Part 201, "Federal Acquisition Regulations System," Subpart 201.1, "Purpose, Authority, Issuance," Section 201.170, "Peer Reviews," and DFARS PGI Part 201, "Federal Acquisition Regulations System," Subpart 201.1, "Purpose, Authority, Issuance," Section 201.170, "Peer Reviews."

⁶⁹ During the first peer review, the Peer Review Team recommended that the JEDI team change the word "any" to "the" or "all" in the definition of "High Risk" in the RFP. On May 4, 2018, the PCO requested a narrow waiver to the DoD Source Selection Procedures, which provides the standard definition of "High Risk," from DPC. The PCO stated in her request that "all remaining portions of the RFP are in compliance with the DoD Source Selection Procedures." On May 31, 2018, DPC granted the waiver, permitting the PCO to slightly modify the standard definition of "High Risk" in the RFP.

- The second peer review was conducted on August 8, 2019, before the August 28, 2019, request for final proposal revisions. The peer review team stated that the purpose of the review was “to ensure that the program evaluated the proposals in accordance with Section M and that the documentation reflected what the SSEB had done.” The peer review team submitted an MFR to the PCO describing their findings. In general, the peer review team made recommendations to improve the clarity and the consistency of the writing for evaluation reports across the Factors 2-6 and 8 evaluation boards. The PCO responded to the recommendations in an MFR with detailed modifications on September 3, 2018.
- The third peer review was conducted on October 15, 2019, before the award of the JEDI Cloud contract. The Peer Review team stated that the purpose of the review was to discuss the JEDI Cloud contract award documentation. The ACO told us that during this peer review, the Peer Review team made verbal recommendations and did not submit a formal report to the PCO. The JEDI team provided verbal feedback during the review.

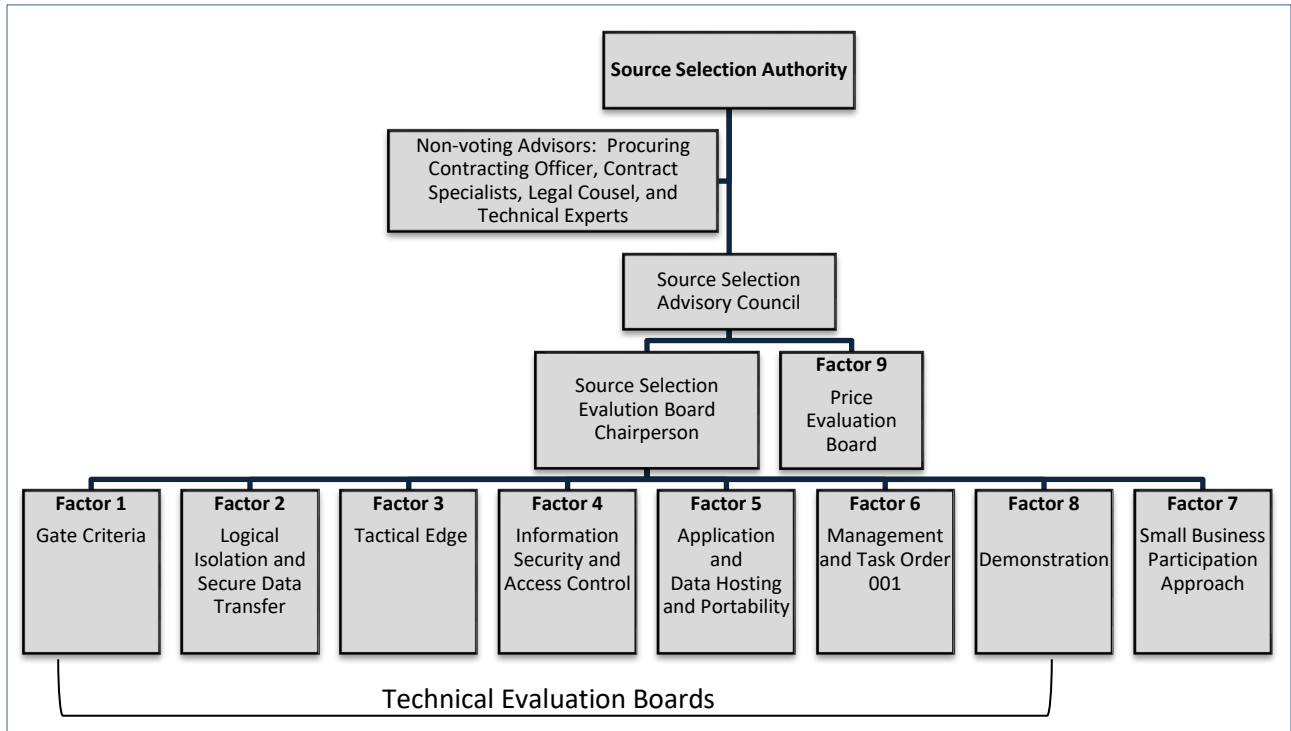
Develop and Release the RFP. The JEDI Cloud RFP was initially released on July 26, 2018, and amended six times. The PCO released the first four amendments publicly before the initial proposals were due on October 12, 2018. The PCO released amendments five and six in May and August of 2019, respectively, to only the contractors still in competition. The final amendments included additional FAR clauses, clarified terms and pricing requirements, and updated general RFP and written proposal instructions with page limits and definitions.

Source Selection Plan. The DoD Source Selection Procedures require the development of a Source Selection Plan that includes a description of the background and objective, acquisition strategy, source selection team, communications plan, evaluation factors and sub-factors, source selection documentation, schedule of events, non-government advisors, and source selection materials.

The Source Selection Authority signed the JEDI Cloud Source Selection Plan on July 23, 2018. The stated purpose of the Source Selection plan was to establish the acquisition and provide guidance to the members of the Source Selection Team (SST) in the evaluation of proposals for JEDI Cloud. The plan was later updated to reflect amendments to Section L and M of the RFP, the schedule of events, and the source selection team members. The final Source Selection Plan was signed on September 30, 2019. We reviewed all versions of the JEDI Cloud Source Selection Plan and confirmed that the plans included the necessary elements required by the DoD Source Selection Procedures.

According to the DoD Source Selection Procedures, the source selection team should be tailored to the specific acquisition. The Procedures state that source selection teams for larger, more complex acquisitions usually consist of a Source Selection Authority (SSA), Procuring Contracting Officer (PCO), Source Selection Advisory Council (SSAC), Source Selection Evaluation Board (SSEB), cost or pricing experts, legal counsel, small business specialists, and other subject-matter experts. The Procedures also place the responsibility for ensuring the source selection team receives the necessary training required to execute the specific source selection on the Source Selection Authority. Figure 1 describes the JEDI Cloud SST team organization.

Figure 1. JEDI Cloud Source Selection Team Organization



Source: The DoD OIG.

The JEDI Source Selection Plan described the following roles and responsibilities of the source selection team.

- Source Selection Authority (SSA) – designated to make the best value decision for the Government in accordance with the evaluation criteria and basis for award stated in the RFP (section M). The SSA was also responsible for the proper and efficient conduct of the source selection process in accordance with all applicable laws and regulations.
- Procuring Contracting Officer (PCO) – primary business advisor and principal guide for the entire source selection. The PCO was responsible for ensuring the source selection process was properly administered.
- Source Selection Advisory Council (SSAC) – responsible for performing a comparative analysis of the evaluations performed by the Source Selection Evaluation Board (SSEB) and the Price Evaluation Board (PEB) and providing an award recommendation to the SSA.
- Source Selection Evaluation Board (SSEB) Chairperson – responsible for summarizing the findings of the Factors 2-8 Technical Evaluation Boards.⁷⁰
- Technical Evaluation Boards (TEBs) for Factors 1-6 and 8, the Small Business Evaluation Board (SBEB) for Factor 7, and the PEB for Factor 9 – responsible for independently conducting a comprehensive review and evaluation of the proposals against the RFP requirements and the

⁷⁰ The SSEB did not include the Factor 1 Technical Evaluation Board (TEB) findings in the summary because Factor 1, Gate Criteria was not considered in the Phase 2 source selection process, discussed below.

approved evaluation criteria for their assigned factor. The TEBs, SBEB, and PEB Chairpersons were each responsible for developing a consensus report conveying the results of the Board's review, evaluation and areas of deficiency with detailed justification and rationale for his assigned factor.

- Non-voting advisors – advised the source selection team on specific issues relevant to the evaluation, after coordination with the PCO and the specific evaluation board Chairperson.

In September 2018, the JEDI Cloud contracting and legal team hosted a multi-day training session for the SST to discuss:

- ethical guidelines;
- JEDI Cloud program;
- RFP, specifically Section L: Instructions, Conditions, and Notices to Offerors and Section M: Evaluation for Award of ID/IQ Contract and Task Orders;
- source selection process;
- required documentation;
- legal guidance; and
- requirements for each factor.

The training also included lessons on determining technical and risk ratings; identifying strengths, weaknesses, and deficiencies; and writing detailed rationales. We reviewed the training materials provided to the SST and interviewed the SSA, SSAC Chairperson, SSEB Chairperson, all nine Factor TEB Chairpersons, the CCPM, and the PCO. Each person stated that they participated in the training and that all topics identified above were thoroughly discussed during the training.

The training materials stated that to help preserve the confidentiality of the JEDI Cloud procurement, all members of the SST would be required to sign a non-disclosure agreement and would be sequestered in a building outside of the Pentagon during the source selection process. The SST was also required to not discuss JEDI Cloud matters outside of the sequestered space and to notify the contracting officer, such as the PCO, of any unauthorized communications with industry or outside individuals about the JEDI Cloud. We verified that each SST member signed a non-disclosure agreement. During our interviews, each SST chairperson affirmed the importance of confidentiality during the JEDI Cloud source selection process.

We reviewed 10 U.S.C. 2431a; FAR Subparts 7.1, 12.1, 12.6, 15.3, and 34.004; DFARS Subpart 215.3 and 201.17; PGI 201.170; DoDI 5000.74, DoD Source Selection Procedures; JEDI Cloud JROCM; Acquisition Strategy; Acquisition Plan; Market Research Report; Peer Review Memoranda; Memoranda in Response to the Peer Reviews; Business Case Analysis; JEDI Cloud RFP as amended and supplemental documents, including Statement of Objectives and Cyber Security Plan; and the JEDI Cloud Source Selection Plan. We also interviewed Mr. Daigle, Ms. Lord, the DDS Deputy Director, the CCPO Program Manager, and the PCO, who all contributed to the pre-solicitation activities or drafting the pre-solicitation documents. Based on our review, we determined the acquisition planning, development of the RFP, release of the RFP, and development of the Source Selection Plan were conducted and documented in compliance with applicable policies and regulations.

Additionally, we reviewed the SST Training materials and interviewed the SSA, SSAC Chairperson, SSEB Chairperson, and all nine Factor TEB Chairpersons. We also determined that the SST was adequately trained on the source selection process, JEDI Cloud program, RFP requirements, and advised of the non-disclosure requirement in accordance with the DoD Source Selection Procedures and the JEDI Cloud Source Selection Plan.

b. Evaluation and Decision Process

The DoD Source Selection Procedures state that the SSEB shall conduct an in-depth review of each proposal against the factors and sub-factors established in the RFP and assign evaluation ratings using the following standardized ratings and definitions.

For Technical Acceptable/Unacceptable Ratings:

- Acceptable – the proposal meets the requirements of the solicitation.
- Unacceptable – the proposal does not meet the requirements of the solicitation.⁷¹

For Technical Ratings:

- Outstanding – the proposal indicates an exceptional approach and understanding of the requirements and contains multiple strengths.
- Good – the proposal indicates a thorough approach and understanding of the requirements and contains at least one strength.⁷²
- Acceptable – the proposal indicates an adequate approach and understanding of the requirements.
- Marginal – the proposal has not demonstrated an adequate approach and understanding of the requirements.
- Unacceptable – the proposal does not meet requirements of the solicitation and, thus, contains one or more deficiencies and is unawardable.

For Technical Risk Ratings:

- Low – the proposal may contain weakness(es) which have little potential to cause disruption of schedule, increased cost, or degradation of performance. Normal contractor effort and normal Government monitoring will likely be able to overcome any difficulties.

⁷¹ The factors and sub-factors that identify the minimum requirements that are key to successful contract performance, such as gate criteria, are evaluated on an “acceptable” or “unacceptable” basis.

⁷² To determine the technical rating, the SST evaluates the quality of the contractor’s technical solution for meeting the Government’s requirement.

- Moderate – the proposal contains a significant weakness or combination of weaknesses which may potentially cause disruption of schedule, increased cost or degradation of performance. Special contractor emphasis and close Government monitoring will likely be able to overcome difficulties.
- High – the proposal contains a significant weakness or combination of weaknesses which is likely to cause significant disruption of schedule, increased cost or degradation of performance. Is unlikely to overcome any difficulties, even with special contractor emphasis and close Government monitoring.
- Unacceptable – the proposal contains a material failure or a combination of significant weaknesses that increases the risk of unsuccessful performance to an unacceptable level.⁷³

The DoD Source Selection Procedures state that the technical evaluations shall be in accordance with the criteria established in the RFP and the relative strengths, deficiencies, significant weaknesses, and risks identified shall be documented in the contract file. The DoD Source Selection Procedures also require the evaluation of Small Business participation objectives. The Small Business participation objectives are similarly evaluated to the technical five point scale, ranging from Outstanding, indicating an exceptional approach and understanding of the small business objectives, to Unacceptable, indicating the proposal does not meet the small business objectives. Additionally, the procedures state that cost or price to the Government shall be evaluated in every source selection; however, no ratings shall be used for evaluating cost or price. The procedures state that when contracting on a firm-fixed-price basis, such as the JEDI Cloud contract, a comparison of the proposed prices will usually satisfy the requirement to perform a price analysis since competition normally establishes price reasonableness, and there is no need to perform a cost analysis.

In addition, the DoD Source Selection Procedures require the evaluation of a contractor's past performance to assess the contractor's ability to meet the RFP requirements. According to the Procedures, the past performance evaluation considers each contractor's recent record of performance in supplying products and services that meet the contract's requirements and how relevant the recent record is to the current contract.⁷⁴ In addition, the Procedures state that past performance need not be evaluated if the contracting officer, with the PM's concurrence, documents the reason it is not an appropriate evaluation factor in accordance with FAR 15.304(c)(3)(iii).⁷⁵

On June 13, 2018, the PCO signed the "Past Performance Waived as an Evaluation Factor" memorandum stating that past performance was not an appropriate evaluation factor for the JEDI Cloud procurement. The PCO waived the past performance evaluation because 1) as a commercial contract, a

⁷³ To rate technical risk, the SST assesses identified weaknesses and considers the potential for disruption of schedule, increased costs, degradation of performance, the need for increased Government oversight, or the likelihood of unsuccessful contract performance.

⁷⁴ The DoD Source Selection Procedures state that in establishing what past performance is relevant to the current effort, consideration should be given to the similarity of product, service, and support; complexity; dollar value; contract type; use of key personnel (for services); and extent of subcontracting and teaming.

⁷⁵ FAR 15.304(c)(3)(iii) states that past performance need not be evaluated if the contracting officer documents the reason past performance is not an appropriate evaluation factor for the acquisition.

past performance evaluation of commercial services already in the global marketplace offers no additional benefit to the DoD, and 2) a past performance evaluation would be redundant to the gate criteria evaluation allowing only the most highly qualified contractors who have successfully performed commercial cloud services on a global scale to be considered for award. The DDS Deputy Director stated that purpose of the Factor 1, Gate Criteria evaluation was to assess the contractor's ability to meet the DoD's technical and security requirements required in the RFP for the JEDI Cloud.

We reviewed FAR 15.304, the DoD Source Selection Procedures, the RFP, and the waiver and determined that the waiver was in compliance with FAR 15.304. We determined that the purpose of both the past performance evaluation and Factor 1, Gate Criteria was to assess the ability of a contractor to meet the requirements of the RFP, making a past performance evaluation redundant. Therefore, we concluded that the rationale for waiving the past performance evaluation requirement was reasonable.

JEDI Cloud RFP Section M: Evaluation for Award

According to the JEDI Cloud Source Selection Plan, the SST will evaluate the contractors' proposals in accordance with the evaluation process stipulated in Section M, "Evaluation for Award of ID/IQ Contract and Task Orders" of the RFP.⁷⁶ Section M1: Basis for Award of the RFP stated that the Government intended to award a single ID/IQ contract for JEDI Cloud to the contractor whose proposal conforms to the RFP requirements and represents the best value to the Government, as determined by the evaluation criteria. The RFP stated that the best value would be based on a detailed evaluation of all the factors outlined in Section M3: Evaluation Factors. The RFP also stated that in determining the best value, the Government may employ a tradeoff process allowing for an award to other than the contractor proposing the lowest price or achieving the highest rating.

RFP Section M2: Evaluation Process stated that the Government would use a two-phase evaluation for the JEDI Cloud Acquisition. According to the RFP, during Phase One, the Factor 1 TEB would evaluate the proposals for Factor 1, Gate Evaluation Criteria against the "acceptable/unacceptable" rating scale. The RFP stated that if a contractor received a rating of "unacceptable" under any of the seven Factor 1, Gate Criteria sub-factors, the proposal would not be further evaluated and; therefore, would not be considered for contract award.

The JEDI Cloud RFP stated that during Phase Two, only the proposals with "acceptable" ratings for Factor 1 would be evaluated on Factors 2 through 6, and Factor 9, and later Factors 7 and 8 if the proposals were included in the "competitive range." The results of the Phase Two, Step One evaluation would determine which contractors would be included the competitive range of proposals. The Source Selection officials would then evaluate the proposals in the competitive range on Factors 7 and 8. Proposals excluded from the competitive range would not be further evaluated. The RFP stated that the contractors in the competitive range would be invited to participate in discussions with the DoD, if the DoD engaged in discussions, and submit final proposal revisions. The Source Selection Authority would make a best value determination based on evaluation of the final proposals.

⁷⁶ See Appendix G, *Request for Proposals Section M: Evaluation for Award*.

RFP Section M3: Evaluation Factors described how each factor and sub-factor would be evaluated and emphasized the aspects of the factor most important to the Government, if applicable. Section M3 also stated that Factor 9, Price, would be evaluated in accordance with FAR 12.209.⁷⁷

RFP Section M4 - Technical Capability Performance Evaluation Ratings and Definitions described the four rating scales that were used to evaluate the contractors' proposals for Factor 1, Gate Criteria and Sub-factors; the technical requirements for Factors 2-6 and 8; the risk for Factors 2-6 and 8; and Factor 7, Small Business Participation Approach.

Evaluation of the JEDI Cloud Proposals

We began our review of the JEDI Cloud Procurement based on allegations regarding the decision to use a single award ID/IQ contract, the development of the RFP requirements, deviations from the Federal and DoD acquisition process, and conflicts of interest between DoD officials and the contractors competing for the JEDI Cloud contract. As a result, we reviewed documentation and interviewed witnesses to determine whether the DoD followed the FAR, the DoD Source Selection Procedures, the JEDI Cloud Source Selection Plan, and the Request for Proposals, Sections M1 and M2 during the source selection process, and whether it was influenced by conflicts of interest or outside pressure.⁷⁸ We did not assess the merits of the DoD's technical or price evaluations, and we did not review or verify the DoD's technical or price evaluations of the contractors' proposals. We therefore do not opine on the appropriateness of the DoD's award of the JEDI Cloud contract to Microsoft rather than AWS.

On February 13, 2020, the U.S. Court of Federal Claims granted Amazon's request for a preliminary injunction to stop the DoD from proceeding with JEDI Cloud contract activities until further order of the court. The court concluded that Amazon is likely to demonstrate that the DoD erred in its evaluation of a discrete portion of Microsoft's proposal and therefore granted the injunction. On March 12, 2020, the DoD filed a motion with the court requesting permission to reconsider its assessment of the application and data hosting price scenario, which could impact the award decision. On March 24, 2020, Amazon filed an objection to the DoD's request to reassess. We do not assess on the ongoing litigation and any potential modifications to the source selection decision, which was not the subject of our review. In the following sections, we examine the process that the DoD followed to award the JEDI Cloud contract.

The DoD Source Selection Procedures require the source selection evaluation and decision process to include the following elements: 1) evaluate the initial proposals; 2) document the initial evaluation results; 3) determine whether to award without discussions; 4) document the competitive range decision; 5) conduct discussions with the contractors in the competitive range; 6) evaluate the final proposals; 7) document the final evaluation results; 8) conduct and document the comparative analysis; 9) determine the best value decision; 10) document the source selection decision; 11) conduct contractor debriefs; and 12) integrate the selected proposal into the contract. We discuss each element in the following sections.

⁷⁷ FAR Part 12, "Acquisition of Commercial Items," Subpart 12.2, "Special Requirements for the Acquisition of Commercial Items," Section 12.209, "Determination of Price Reasonableness."

⁷⁸ See Section I, *Scope of the DoD OIG Review and Investigation*.

Elements 1-2. Evaluation of Initial Proposals and Documentation of Results

Phase One Evaluation: Factor 1, Gate Criteria. The DoD Source Selection Procedures state that following the initial round of evaluations, the SSEB Chairperson would consolidate the inputs from each of the evaluation teams into an SSEB report. The SSAC would review the results of the SSEB to see if additional areas of evaluation by the SSEB are required. The procedures also state that the PCO and the SSEB Chairperson shall ensure that proposals are evaluated solely against the criteria contained in the solicitation and no comparative analysis of proposals was conducted by SSEB members. Additionally, according to the procedures, based on the review of the initial evaluation results, the SSA will decide to either approve award without discussions or enter into the discussion process.

(~~FOUO SSI~~) On December 12, 2018, the Factor 1 Technical Evaluation Board (TEB) Chairperson signed the evaluation reports for the four complete proposals—AWS, IBM, Microsoft, and Oracle. [REDACTED]

[REDACTED] We discuss the Factor 1 evaluations for Oracle and IBM in detail below.

On February 26, 2019, after reviewing the Factor 1 TEB reports for each contractor, the SSA determined that the Factor 1 TEB followed the evaluation methodology set forth in Section M2 of the RFP and consistently applied ratings in accordance with the Technical Acceptable/Unacceptable scale. The SSA also accepted the Factor 1 TEB's ratings and recommendations.

(~~FOUO SSI~~) On April 9, 2019, the PCO documented her decision to establish a competitive range that included AWS and Microsoft and excluded IBM and Oracle. The PCO also noted that the proposals from [REDACTED] were incomplete, could not be meaningfully evaluated, and therefore were eliminated from competition.⁷⁹

(~~FOUO SSI~~) On April 10, 2019, the SSA documented her agreement with the PCO's establishment of the competitive range, stating that the determination to exclude Oracle and IBM was made based on the evaluation process set forth in Sections M1 and M2 of the RFP. On April 10, 2019, the PCO notified Oracle and IBM that their proposals had been excluded from the competitive range and provided each contractor with their respective Factor 1 TEB reports. The PCO also notified [REDACTED] of the TEB's inability to evaluate their proposals because each company failed to submit any information for Factor 1, Gating Evaluation Criteria, among other material deficiencies. We discuss the rationale for excluding Oracle and IBM in the next sections.

Excluding Oracle's Proposal from Further Evaluation. Section L4 of the RFP detailed the information that a contractor must provide for each of the seven sub-factors for Factor 1, Gate

⁷⁹ (~~FOUO SSI~~) The PCO notified [REDACTED] that their proposals could not be meaningfully evaluated because they failed to conform to the requirements of the RFP and were missing required information, including the Factor 1, Gate Criteria information; therefore, the proposals were eliminated from competition.

Criteria.⁸⁰ For Sub-factor 1.1, Elastic Usage, the RFP stated that the contractor shall demonstrate compliance by providing a summary report of CCO usage for January 2018 and February 2018 for three metric areas, Network, Compute, and Storage.⁸¹ The contractor must demonstrate that adding JEDI unclassified usage would represent less than 50 percent of the contractor's total CCO usage.⁸² Section L1 of the RFP stated that the Government would consider any failure to comply with RFP instructions to be indicative of what could be expected from a contractor during contract performance and may consider it a weakness of the proposal. The Factor 1 TEB rated Oracle as "unacceptable" for Sub-factor 1.1. We discuss the Sub-factor 1.1 requirements and Oracle's deficiencies below.

- ~~(FOUO SSI)~~ Network – The RFP required a comparison of the total volume of commercial client traffic, in bytes, in and out of the cloud, with and without JEDI users. [REDACTED] as required by the RFP.
- ~~(FOUO SSI)~~ Compute – The RFP required the number of physical compute processors in use by application servers, which are defined as those physical servers that host the virtualized infrastructure and platform services used by end users. [REDACTED]
- ~~(FOUO SSI)~~ Storage – The RFP required data, in bytes, for each of online, nearline, and offline storage averaged across January 2018 and February 2018.⁸³ [REDACTED]

We reviewed Oracle's proposal, Oracle's Factor 1 TEB report, and the Factor 1 TEB's answers to Oracle's debriefing questions and interviewed a member of the Factor 1 TEB.⁸⁴ We concluded that the Factor 1 TEB evaluated Oracle's proposal in accordance with the evaluation process set forth in Section M2 of the RFP and consistently applied Technical Acceptable/Unacceptable ratings in accordance with DoD Source Selection Procedures. We also found that the Factor 1 TEB report thoroughly documented the deficiencies, significant weaknesses, and risks identified during the evaluation, in compliance with DoD Source Selection Procedures. Additionally, the Factor 1 TEB, thoroughly answered Oracle's debriefing questions in writing. We concluded that the TEB's rating of Oracle's proposal as

⁸⁰ See Appendix F for Section L4: Volume II – Gate Criteria Submission Instructions, in full.

⁸¹ Commercial Cloud Offering is defined in the RFP as the IaaS and PaaS offerings that are publicly-available and currently sold in the commercial marketplace, but excluding any Software as a Service (SaaS) offerings.

⁸² The amount of JEDI usage for network, compute, and storage to be used in the demonstration was provided in the RFP.

⁸³ The RFP defines online storage as storage that is immediately accessible to applications without human intervention; nearline storage as storage not immediately available, but can be brought online quickly without human intervention; and offline storage as data not immediately available, requiring some human or scheduled intervention to become online, also known as Cold Storage.

⁸⁴ The Chairperson of the Factor 1 TEB left the DoD in July 2019.

“unacceptable” for Factor 1 was reasonable, based on Oracle’s inability to meet the technical requirements of Sub-factor 1.1 and noncompliance with the RFP instructions. As a result of Oracle’s “unacceptable” rating for Factor 1, the PCO excluded Oracle’s proposal from further evaluation, in accordance with Section M2 of RFP.

In its September 6, 2018, revised pre-award protest to GAO, Oracle asserted that the Gate Criteria as written exceeded DoD’s needs, violated policy, and limited competition unnecessarily. On November 14, 2018, after considering Oracle’s challenges to the terms of the RFP and DoD’s response, the GAO found “no merit in any of Oracle’s allegations.”⁸⁵

In its December 6, 2018, pre-award protest to the U.S. Court of Federal Claims, Oracle asserted that the use of certain gate criteria, including Sub-factors 1.1, 1.2, and 1.6, was improper. On July 19, 2019, the court ruled that Sub-factor 1.2, High Availability and Failover, was tied to the DoD’s minimum needs and therefore enforceable. The court’s opinion noted that Oracle received an “unacceptable” rating for sub-factor 1.1 and that Oracle conceded that it could not meet the requirements for Sub-factor 1.2 at the time of its proposal submission. The court’s opinion also stated that because Sub-factor 1.2 was enforceable, it did not need to consider Sub-factors 1.1 or 1.6. The court concluded that Oracle still would have been excluded from competition due to its inability to meet Sub-factor 1.2.⁸⁶

(FOUO SSI) *Excluding IBM’s Proposal from Further Evaluation.* [REDACTED]

[REDACTED] For Sub-factor 1.2, the RFP states that the contractor shall demonstrate high availability and failover of the CCO data centers, defined as the physical locations containing the physical CCO hardware used to provide unclassified IaaS and PaaS services. The contractor must demonstrate that it has no fewer than three data centers, each supporting at least one IaaS and one PaaS offering that are FedRAMP Moderate authorized, and each separated by at least 150 miles.⁸⁷ Sub-factor 1.2 also required demonstrations of global network availability, data storage redundancy, and automatic monitoring of resource utilization and events. We discuss IBM’s deficiencies below.

(FOUO SSI) In its proposal, [REDACTED]

We reviewed IBM’s proposal, the Factor 1 TEB Report and interviewed a member of the Factor 1 TEB. Our review determined that the Factor 1 TEB evaluated IBM’s proposal in accordance with the evaluation process set forth in Section M2 of the RFP and consistently applied Technical

⁸⁵ See Section II, “JEDI Cloud Contract Protests and Inquiries” and Appendix A of this report for discussion of Oracle’s pre-award protest to GAO.

⁸⁶ See Section II, “JEDI Cloud Contract Protests and Inquiries” and Appendix B of this report for discussion of Oracle’s pre-award protest to the Court of Federal Claims.

⁸⁷ See Section III.2.d of this report for discussion of FedRAMP Moderate authorization.

Acceptable/Unacceptable ratings in accordance with DoD Source Selection Procedures. We also found that the Factor 1 TEB report thoroughly documented the deficiencies, significant weaknesses, and risks identified during the evaluation, in compliance with DoD Source Selection Procedures. We determined that the TEB's rating of IBM's proposal as "unacceptable" for Factor 1 was reasonable, based on IBM's inability to meet the technical requirements of Sub-factor 1.2. As a result of IBM's "unacceptable" rating for Factor 1, the PCO excluded IBM'S proposal from further evaluation, in accordance with Section M2 of RFP.

On October 10, 2018, IBM filed a protest with the GAO, asserting that the JEDI Cloud requirements are unduly restrictive and fail to reflect the DoD's legitimate needs, similar to Oracle's protests. On December 6, 2018, Oracle filed its pre-award bid protest with the COFC. As a result, on December 11, 2018, the GAO dismissed IBM's protest, stating, "We will not decide a protest where the matter involved is the subject of litigation before a court of competent jurisdiction." We present information about IBM's protest to GAO and the court in Appendices A and B to this report.

~~(FOUO SSI)~~ *Phase Two Evaluation: Factors 2-9.* On December 12, 2018, the Factor 1 Technical Evaluation Board rated the proposals from AWS and Microsoft as "acceptable" and the Source Selection officials continued evaluating these proposals under Phase 2 for Factors 2-9. On February 20, 2019, the Factor 9 PEB Chairperson signed the Price Evaluation Board Report. The PEB report of the initial AWS and Microsoft proposals documented the strengths, weaknesses, and deficiencies, and it included justification and rationale for the analysis and recommendations. [REDACTED]

[REDACTED] We discuss the final total evaluated prices of the AWS and Microsoft final proposals in detail in the "Elements 7 and 8. Documentation of the Final Evaluation Results and Comparative Analysis" section of the report, below.

On February 25, 2019, the SSAC Chairperson signed an Executive Summary Report summarizing the Factors 2-6 TEB reports of the initial AWS and Microsoft proposals. The Factor 2-6 TEB reports included technical and risk ratings; identified strengths, weaknesses, deficiencies, and risks; and included justification and rationale for the analysis and recommendations. We interviewed each of the Factor 2-6 and 9 Chairpersons and each confirmed that the TEBs evaluated each proposal individually solely against the criteria in the RFP. The Factor Chairpersons also stated that the TEBs were instructed against making any comparisons between the proposals during their evaluations.

On February 25, 2019, after reviewing the SSEB and PEB reports, the SSAC determined the evaluation process followed the evaluation criteria set forth in the RFP and ratings were appropriately and consistently applied across all contractors. Additionally, the SSAC recommended against the SSA making an award based on the initial proposals, because both AWS's and Microsoft's proposals had various deficiencies among Factors 2-6 and 9 that were unacceptable for award. On April 10, 2019, the SSA documented the initial evaluation results, her concurrence with the SSAC's recommendations, and her decision to enter into discussions with AWS and Microsoft to address the deficiencies in a memorandum.

Elements 3 through 6. Award without Discussions Determination, Documentation of Competitive Range Decision, Discussions, and Final Proposal Revisions

The DoD Source Selection Procedures state that a competitive range decision document shall be prepared whenever the PCO establishes, and the SSA approves, a competitive range. If discussions are to be conducted, the PCO must conduct discussions tailored to each contractor's proposal with every contractor in the competitive range. The PCO is encouraged to discuss other aspects of the contractor's proposal that could, in the opinion of the PCO, be altered or explained to enhance materially the proposal's potential for award, such as weaknesses, excesses, and price. However, the PCO is not required to discuss every area where the proposal could be improved. Discussions shall be documented on and conducted through the transmittal of Evaluation Notices.⁸⁸ Once the decision is made to conclude discussions, each contractor still within the competitive range shall be given an opportunity to submit a final proposal revision (FPR). After receipt of the FPRs, the SSEB shall complete evaluation of the FPRs. The evaluation criteria from the RFP shall continue to be the basis for evaluation.

On April 10, 2019, the PCO documented her determination that the competitive range included AWS and Microsoft and excluded Oracle and IBM. The PCO also stated that both proposals in the competitive range required discrete, localized revisions to be made awardable and the SST had received permission from the SSA to enter into discussions with both AWS and Microsoft regarding the revisions. Between April 24, 2019, and May 13, 2019, the CCPO and PCO engaged in discussions with AWS and Microsoft. On May 3, 2019, the PCO requested interim proposal revisions (IPRs) and confirmed that discussions would remain open. On July 1, 2019, the PCO notified AWS and Microsoft that additional discussions were necessary due to deficiencies and significant weaknesses identified in the IPRs. The final discussions concluded on August 21, 2019. The PCO invited AWS and Microsoft to submit final proposal revisions on August 28, 2019. The discussions of the deficiencies and significant weaknesses were documented in Evaluation Notices, e-mails, and meeting minutes and summarized by the PCO in a memorandum signed on September 4, 2019. On September 5, 2019, each contractor submitted their final proposal revisions to the SST for evaluation.

Elements 7 and 8. Documentation of the Final Evaluation Results and Comparative Analysis

The DoD Source Selection Procedures state that the SSEB shall prepare documentation of the final evaluation results. According to the procedures, the record of evaluation results shall be in sufficient detail to serve as a clear and concise record of the evaluation analysis and shall be included in the contract file. The SSAC shall also review the evaluation and findings of the SSEB to ensure their accuracy, consistency, and supportability in accordance with the evaluation criteria. Additionally, the SSAC shall provide a written comparative analysis of proposals and an award recommendation in an SSAC report for the SSA's consideration.

Between July 24, 2019 and September 30, 2019, the Factor 2-6 TEBs, the Factor 7 SBEB, and the Factor 9 PEB Chairpersons finalized their evaluation reports. The Factor 2-6 TEBs and the Factor 7 SBEB completed their evaluations before the FPRs were received on September 5, 2019, based on the Interim Proposal Revisions (IPRs) submitted during discussions. Each Factor Chairperson documented that the

⁸⁸ The DoD Source Selection Procedures defines Evaluation Notice as the PCO's written notification to the contractor for purposes of clarifications, communications, or discussions.

TEB report was based on the IPR, found that the IPR and FPR were identical or nearly identical, noted any differences, and confirmed that evaluations of the FPR would not have resulted in a different evaluation.

We reviewed the memoranda reaffirming the IPRs for Factors 2-7 for AWS and Microsoft and found that the differences noted between the IPRs and FPRs were minor (changes to page numbers and corrections of typographical errors) and evaluations based on the FPRs would not have affected the final award decision.

On October 3, 2019, after reviewing the Factor 2-6 and 8 TEB reports, the Factor 7 SBEB report, and supporting rationale, the SSEB Chairperson signed the SSEB Executive Summary Report. The report stated that the FPRs from AWS and Microsoft were evaluated in accordance with the RFP. The SSEB found that the TEBs and SBEB evaluated each proposal independently against the relevant factor criteria as stated in the RFP. The SSEB also stated that it consistently applied the evaluation criteria and ratings in the RFP, but it did not compare proposals against one another or compare proposals across factors. For each factor, the SSEB report included a restatement of the technical and risk ratings, a summary statement highlighting points of differentiation between the two proposals (where applicable), and a summary of the strengths and weaknesses of each proposal.

(FOUO-SSI) On September 30, 2019, the PEB Chairperson signed the PEB report documenting the events, analysis, findings, and determinations related to Factor 9, Price. [REDACTED]

[REDACTED]

(FOUO-SSI) [REDACTED]

(FOUO-SSI) On October 3, 2019, the SSAC signed the SSAC Report documenting the comparative analysis and award recommendation. The SSAC report stated that all TEB and SBEB reports, and FPRs, were made available to the SSAC for review and the TEB Chairs were available to answer questions. [REDACTED]

[REDACTED]

(FOUO-SSI) [Redacted]

(FOUO-SSI) [Redacted]

(FOUO-SSI) [Redacted]

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(FOUO-SSI) [Redacted]

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(FOUO-SSI) [Redacted]

⁸⁹ The Committee on National Security Systems defines a cross-domain solution as a form of controlled interface that provides the ability to manually or automatically access or transfer information between different security domains.

⁹⁰ The total evaluation price is the total cost of the price scenarios detailed in the RFP used to evaluate Factor 9, not an estimated total cost of the JEDI Cloud.

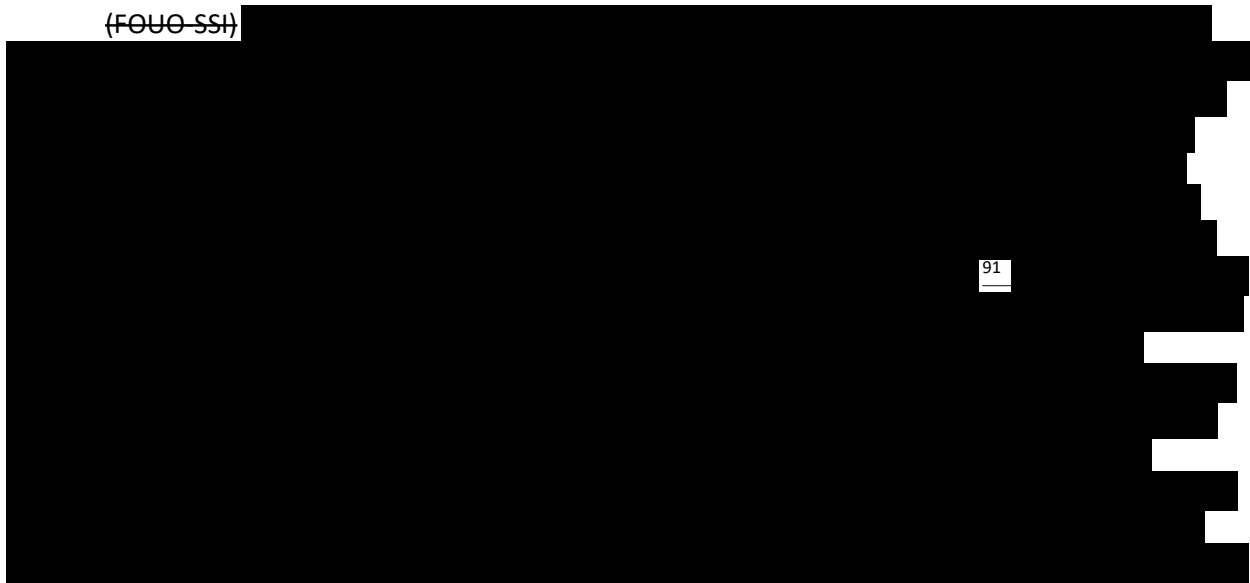
Elements 9 and 10. Best Value Decision and Documentation of Source Selection Decision

The DoD Source Selection Procedures state that the SSA's decision regarding which proposal is most advantageous to the Government shall be based on a comparative assessment of proposals against all source selection criteria in the solicitation. The procedures state that the analysis must be consistent with the evaluation factors and process described in the RFP. However, the SSA has broad discretion in making the source selection decision. The procedures also state that to determine which proposal provides the best value, the SSA must understand and analyze the differences between competing proposals. The SSA is not bound by the evaluation findings of the SSEB or the recommendations of the SSAC as long as the SSA has a rational basis for the differing opinion.

The DoD Source Selection Procedures require that a Source Selection Decision Document (SSDD) be prepared for all source selections. In addition, the SSDD shall reflect the SSA's independent, integrated, comparative assessment and decision; shall include the rationale for any business judgments and tradeoffs made or relied on by the SSA; shall state why the benefit is in the Government's best interest; and shall be included in the contract file.

On October 17, 2019, the SSA signed the Source Selection Decision Document. The SSA determined that Microsoft represented the best value to the Government and selected Microsoft's proposal for award. The SSA stated in the Decision Document that her selection was based on her independent judgment, was consistent with the evaluation criteria set forth in RFP, and was supported by careful consideration of the SSEB evaluation of technical proposals, the PEB evaluation of price proposals, and the SSAC's Comparative Analysis Report and Recommendation. The SSA also stated in the Decision Document that throughout the source selection process, she was thoroughly briefed by the PCO, SSEB, PEB, and SSAC to ensure she had a full understanding of both the analyses and the recommendations.

(FOUO-SSI)



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⁹¹ A tradeoff process allows for an award to a contractor other than the contractor proposing the lowest price or achieving the highest rating.

(FOUO SSI)



Therefore, the SSA selected Microsoft for award of the JEDI Cloud contract.

On October 24, 2019, after an update by the CCPO on the JEDI Cloud acquisition process and plan for execution, USD(A&S) Lord signed a memorandum authorizing the CCPO to proceed with the “process for award in accordance with the solicitation.”

Elements 11 and 12. Contractor Debriefings and Integration of the Proposal into the Contract

The DoD Source Selection Procedures state the PCO shall ensure contractors are debriefed, if requested, in accordance with FAR 15.505 and FAR 15.506, as applicable.⁹² According to the procedures, the contracting officer shall incorporate beneficial aspects of the awardee’s proposal into the contract, particularly those above threshold (minimum) attributes for which the contractor was selected. FAR 15.503(b)(1) states that within 3 days after the date of contract award, the contracting officer shall provide written notification to each contractor whose proposal was in the competitive range but was not selected for award. FAR 15.506(a)(1) states that a contractor has three days after receipt of notification of contract award to request in writing a debriefing on the basis for the selection decision and contract award. Furthermore, FAR 15.506(a)(2) states that the debriefing should occur within 5 days of receipt of the request.

On October 25, 2019, the PCO notified Microsoft through e-mail that it had been selected for award of the JEDI Cloud contract. The PCO included the JEDI Cloud ID/IQ contract as an attachment to the e-mail. Within the hour of notifying Microsoft, the Contract Specialist, on behalf of the PCO, notified AWS through e-mail that it had not been selected for the contract. The e-mail included the redacted copies of the SSDD, SSAC, SSEB, and PEB reports, and the unredacted TEB reports. The PCO stated in the e-mail that the DoD considered this AWS’s written debriefing.

On October 29, 2019, AWS submitted 265 post-award enhanced debriefing questions to the PCO in accordance with AWS’s right to request an enhanced debriefing.⁹³ On November 5, 2019, the Administrative Contracting Officer (ACO) responded to AWS’s questions and considered the debriefing concluded.

⁹² FAR Part 15, “Contracting by Negotiation,” Subpart 15.5, “Preaward, Award, and Postaward Notifications, Protests, and Mistakes,” Section 15.505, “Preaward debriefing of offerors,” and Section 15.506, “Postaward debriefing of offerors.”

⁹³ DoD Class Deviation 2018-O0011, “Enhanced Postaward Debriefing Rights,” March 22, 2018, states that contracting officers shall provide an unsuccessful contractor an opportunity to submit additional questions related to the debriefing within two days of receiving the debriefing. The agency shall respond in writing to the additional questions within five business days after receipt of the questions.

Post-Award Protest

As noted above, on February 13, 2020, the U.S. Court of Federal Claims granted Amazon's request for a preliminary injunction to stop the DoD from proceeding with JEDI Cloud contract activities until further order of the court. Amazon argued that the DoD improperly evaluated Microsoft's proposal for Factor 5 - Application and Data Hosting, Price Scenario 6. Specifically, Amazon argued that the DoD should have found Microsoft's proposal technically unfeasible, assigned a deficiency, and eliminated Microsoft from competition.

The court reviewed the portions of the court record cited by the DoD, Amazon, and Microsoft, considered their arguments, and concluded that Amazon is likely to demonstrate that the DoD erred in determining that Microsoft's proposal for Factor 5, Price Scenario 6, was technically feasible. The court also concluded that the error would likely affect the price evaluation which would affect the best value determination. As a result, the court granted the preliminary injunction.

We make no judgment on the litigation and the court's reasoning and decision, which remains under review. Rather, in our review, we examined the DoD's source selection process and determined that the process was in compliance with applicable statutes, policies, and the evaluation process described in the Request for Proposals. However, we do not believe the court's substantive, preliminary conclusion regarding the DoD's technical evaluation is inconsistent with our determination that the procurement and source selection process was conducted in compliance with the FAR, the DoD Source Selection Procedures, the JEDI Cloud Source Selection Plan, and the Request for Proposals, Sections M1 – Basis for Award and M2 – Evaluation Process. In addressing the process that was used, we did not review the technical merits of the contractors' proposals or the DoD's technical or price evaluations. Therefore, we did not, and cannot, reach any conclusion regarding the appropriateness of the DoD's award of the JEDI Cloud contract to Microsoft rather than Amazon, or the DoD's substantive conclusions regarding the technical feasibility of Factor 5, Price Scenario 6, or the other evaluations conducted.

However, Amazon's post-award bid protest is still the subject of ongoing litigation and the DoD has filed a motion with the court requesting approval to reconsider their assessment of Factor 5, Price Scenario 6, which could impact the award decision. Amazon has challenged the scope of the DoD's motion. The judicial process will likely address this issue, as well as the court's reference in its decision to other errors that Amazon alleged in the application of the solicitation's evaluation factors. In short, we do not offer an opinion on the ongoing litigation and any potential modifications to the source selection decision, which is subject to the court's review and which is beyond the scope of this review.

c. Documentation Requirements

The DoD Source Selection Procedures state that at a minimum, the following documents must be maintained in the permanent contract file.

- The Source Selection Plan and any revisions thereto. We obtained and reviewed the JEDI Source Selection Plan, and all of its amendments.⁹⁴

⁹⁴ See Section III.3.b of this report for discussion of the JEDI Cloud Source Selection Plan and all revisions.

- Nondisclosure and conflict of interest statements. We obtained and reviewed the nondisclosure agreements signed by every member of the SST.
- The draft RFP, along with all comments received and Government responses thereto, if a draft RFP is issued. We obtained and reviewed both draft RFPs and all the questions and comments and Government responses to the draft RFPs.
- The RFP, any amendments thereto, and FPR request. We obtained and reviewed the RFP and all six amendments. We also obtained and reviewed the PCO's request for FPRs.⁹⁵
- Past performance information (for example, questionnaires, interviews, CPARS reports) (paragraph 3.1.3). We obtained and reviewed the PCO's "Past Performance Waiver" memorandum, June 13, 2018.
- Offeror proposals, including all revisions, annotated with the date of receipt. We obtained and reviewed the initial proposals from Oracle, IBM, Microsoft and AWS as well as the interim and final proposals from Microsoft and AWS.
- Competitive range decision documentation. We obtained and reviewed the PCO's "Memorandum Documenting Anticipated Determination of Competitive Range and Requesting Concurrence," April 9, 2019; the SSA's "Memorandum Documenting Concurrence of the Determination of Competitive Range," signed April 10, 2019; and the PCO's "Memorandum for Record – Documenting Determination of Competitive Range," April 10, 2019.
- Evaluation Notices, Evaluation Notice disposition, and Government evaluation thereof. We obtained and reviewed the e-mails, meeting minutes, and the PCO's "Memorandum Documenting Discussions," September 4, 2019, documenting the evaluation notices.
- SSEB Initial and Final Report. We obtained and reviewed the SSEB's initial "SSEB Executive Summary Report for Joint Enterprise Defense Infrastructure (JEDI) Cloud Request for Proposals (RFP) HQ0034-18-R-0077," February 25, 2019 and final "SSEB Executive Summary Report for Joint Enterprise Defense Infrastructure (JEDI) Cloud Request for Proposals (RFP) HQ0034-18-R-0077," signed October 3, 2019.
- SSAC Report. We obtained and reviewed the SSAC's "SSAC Executive Summary Report for Joint Enterprise Defense Infrastructure (JEDI) Cloud Request for Proposals (RFP) HQ0034-18-R-0077," February 25, 2019 and "Source Selection Advisory Council (SSAC) Report - Comparative Analysis and Award Recommendation," October 3, 2019.
- Source Selection Decision Document. We obtained and reviewed the SSA's "Source Selection Decision Document," October 17, 2019.
- Debriefing documents. We obtained and reviewed the notifications to the successful and unsuccessful contractors including all debriefing documents.

⁹⁵ See Section III.2 for discussion of the development of the RFP.

- Award documentation (for example, responsibility determination, SSA concurrence to release Final Proposal Revision request). We obtained and reviewed the e-mails sent to the contractors in the competitive range requesting Final Proposal Revisions, August 28, 2019; Ms. Lord's memorandum, "Enterprise Cloud Authority to Proceed with Award," October 24, 2019; the e-mail notification to the successful contractor, October 25, 2019; and the JEDI Cloud contract, October 25, 2019.
- All correspondence with offerors that occurred during source selection. We have obtained and reviewed correspondence, including letters and e-mails, sent to and received from each contractor regarding receipt of proposals, competitive range notifications, discussions, award notifications, and debriefings.

Based on our review of the documents listed above, we determined that the PCO maintained documents in the permanent contract file, in compliance with the DoD Source Selection Procedures.

d. OIG Conclusions – Source Selection Process

Based on our interviews with relevant DoD officials and review of the contracting and source selection documentation, we determined the pre-solicitation activities and documentation were conducted in accordance with the DoD Source Selection Procedures. We also determined that the source selection team evaluated all proposals in compliance with the DoD Source Selection Procedures, the JEDI Cloud Source Selection Plan, and the Request for Proposals, Sections M1 – Basis for Award and M2 – Evaluation Process. We concluded that the source selection team's evaluation of the contractors' proposals was consistent with established DoD and Federal source selection standards.

4. Disclosure of Source Selection and Proprietary Information After Contract Award

FAR 15.506 states that, after contract source selections are complete and the contract award has been announced, upon written request, the contracting officer, such as the Procuring Contracting Officer (PCO), will provide information to the contractors about the selection decision and contract award. The DoD Source Selection Procedures state that the purpose of a post-award debriefing is to:

- assure contractors that the Government properly evaluated their proposals and made the award determination in accordance with the Request for Proposals (RFP);
- explain why a proposal was successful or unsuccessful;
- increase competition, encourage contractors to continue to invest resources in the Government marketplace, and enhance the Government's relationship and credibility with industry;
- provide feedback to offerors to assist in improving future proposal submissions; and
- deter a protest by demonstrating that the Government conducted a thorough, fair evaluation and made a sound decision according to the established source selection methodology.

On October 25, 2019, the PCO notified Microsoft through e-mail that it had been awarded the JEDI Cloud contract. Within an hour of awarding the contract, the contract specialist, using the PCO's computer, also notified AWS through e-mail that its proposal was not selected for award and provided AWS with a written post-award debriefing. The written debriefing to AWS consisted of a series of

notification e-mails including the redacted SSDD, SSAC, SSEB, PEB reports and the AWS TEB reports. However, the e-mail also included the unredacted Microsoft TEB reports, which revealed source selection information and proprietary Microsoft information.

We examined the events that occurred before, during, and after the award of the JEDI Cloud contract and the debriefing provided to the unsuccessful contractor, AWS, to determine whether the disclosure of the Microsoft source selection and proprietary information to AWS violated FAR requirements or DoD policy, and if the disclosures were deliberate or inadvertent.

a. Significant Events Before Contract Award

FAR 15.506 states that a contractor has three days after notification of contract award to request a post-award debriefing and that, to the maximum extent practicable, the Government then has five days from the date of request to provide the debriefing. According to FAR 15.503, the notice of award shall include, in general terms, the reason the contractor's proposal was not accepted. It also states that in no event shall a contractor's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other contractor.

Decision to Conduct a Written Debriefing

FAR 15.506 allows a contracting officer to conduct an oral or written debriefing. According to Mr. Ranks, the Deputy CIO for Information Enterprise, and the Cloud Computing Program Office (CCPO) Program Manager (PM), they expected the debriefing for the unsuccessful contractor to be conducted orally, as did Mr. Deasy, the Chief Information Officer (CIO) and Ms. Lord, the Undersecretary of Defense for Acquisition and Sustainment (USD[A&S]). Mr. Ranks told us that neither he, Mr. Deasy, nor Ms. Lord inquired about how the debriefing would be conducted because, in their experience, an oral debriefing was standard practice for a contract of this magnitude. The CCPM told us that she considered an oral debriefing a courtesy to the contractor, and both Mr. Ranks and the CCPM told us that in their experience, an oral debriefing can de-escalate a contentious situation.

In the weeks leading to the JEDI Cloud contract award, two Washington Headquarters Service (WHS) Assistant General Counsels (AGC 1 and AGC 2), with the CCPO Legal Advisor, advised the PCO against conducting an oral debriefing. The PCO told us that she did not believe that an oral debriefing would de-escalate the situation or reduce the risk of protest from the unsuccessful contractor, and therefore she decided to conduct a written debriefing.

However, the CCPM continued to advocate for conducting an oral debriefing up until the contract was awarded. On October 25, 2019, the day of the contract award, WHS AGC 2 stated in an e-mail to the CCPM that "[the WHS OGC] has consistently advised against conducting any oral communications, to include debriefs, as it increases litigation risk. The chance for misunderstanding is high." The WHS AGC 2 explained to us that in his opinion, oral debriefings are a bad idea "mainly because of how parties in procurements of this size, magnitude, and publicity ... don't tend to use [an oral debriefing] in the manner in which it's intended. They tr[y] to trick the [PCO] and the Government [into] saying something they don't mean, that they can then use against [the Government] in litigation," which could jeopardize the contract award. The WHS AGC 2 also told us that written debriefings are less risky because the debriefing packages undergo multiple levels of review before release to ensure they

are legally sufficient, meet the FAR requirements, and provide sufficient feedback to the unsuccessful contractors. Mr. David Sanders, Director of WHS Acquisition Directorate, agreed with WHS AGC 2's advice and the PCO's decision to conduct a written debriefing for the unsuccessful contractor.

Decision to Simultaneously Notify the Unsuccessful Contractor and Issue the Written Debriefing

As noted above, FAR 15.506 states that to the maximum extent practicable, the Government has five days from the date of a contractor's request for a debriefing to provide the debriefing. In the weeks leading to the JEDI Cloud contract award, the WHS AGC 2 advised the PCO to notify the unsuccessful contractor and provide the written debriefing documents at the same time. The WHS AGC 2 told us, "When conducting debriefings in accordance with the FAR, DFARS, and Class Deviation [2018-O0011] ... it's best for us to get [the information] out immediately."⁹⁶ The WHS AGC 2 also said that he had advised the PCO to release as much information as possible as part of his litigation mitigation strategy. The WHS AGC 2 told us that he prefers that an unsuccessful contractor receive "everything up front" so it has sufficient information to understand why the DoD did not select its proposal.

However, the CCPM also told us that the JEDI team expected a protest from the unsuccessful contractor, which created pressure "to start the protest clock immediately."⁹⁷ The PCO told us that she knew that there would be a tremendous amount of documentation included in the debriefing. The PCO said the contracting team had previously exchanged large files electronically with the contractors during the source selection process and, therefore, she did not foresee any problems. Additionally, she told us that simultaneous award notification and debriefing are "typically how it's done."

Preparation of the Written Debriefing Documentation

On October 9, 2019, the PCO assigned the Contract Specialist to prepare the debriefing package for AWS, the unsuccessful contractor. The debriefing included the unsuccessful contractor notification letter and the SSDD, SSAC, SSEB, and PEB reports.

The PCO also tasked the contract specialist with redacting any source selection and proprietary information from the reports. The PCO told us that for past acquisitions, she has typically only released the unsuccessful contractor's TEB reports as the written debriefing. The PCO told us that she does not usually release the SSDD, SSAC, SSEB, and PEB reports as part of a written debriefing. However, for this procurement, the PCO told us that the WHS AGC 1 and 2 advised her to release as much information as possible to the unsuccessful contractor. The PCO told us that she chose not to go against the advice of WHS OGC because she believed the matter would be escalated to WHS AD and WHS OGC leadership.

⁹⁶ DoD Class Deviation 2018-O0011, "Enhanced Postaward Debriefing Rights," March 22, 2018, states that contracting officers shall provide an unsuccessful contractor an opportunity to submit additional questions related to the debriefing within two days of receiving the debriefing. The agency shall respond in writing to the additional questions within 5 business days after receipt of the questions.

⁹⁷ Title 4, Code of Federal Regulations, section 21.2(a)(2) states that to protest a contract award at the GAO, the initial protest challenging the award of a contract shall be filed not later than 10 days after the date on which the debriefing is held. The Court of Federal Claims does not have a filing deadline for post-award protests.

Mr. John Albanese, WHS General Counsel, told us that it is ultimately the PCO's decision whether to follow WHS OGC's advice. However, the PCO told us that although she understands that it is ultimately her decision and responsibility, she believed the best course of action was to follow WHS OGC's advice because they would be the ones defending WHS and the DoD against any legal action.

On October 11, 2019, the contract specialist sent his proposed redactions to the SSDD, SSAC, SSEB, and PEB reports to the WHS AGC 2. The WHS AGC 2 told us that he was responsible for reviewing the contract specialist's proposed redactions and "[determining] what information is source selection sensitive or otherwise should not [be] available to the public or other [contractors]" in accordance with the law.

On October 11, 2019, the WHS AGC 2 updated the list of enclosures in the draft letter to AWS to include the "TEB (Interim Proposal Revisions (IPR) Factors 2-7 & Final Proposal Revision (FPR) Factors 2-8)."

The WHS AGC 1 told us that, before her departure from work on October 15, 2019, she held a meeting with the JEDI Cloud contracting team to review all that needed to be accomplished prior to award day. She told us that during the meeting, she listed all the documents that should be included in the AWS debriefing and stated that AWS should only receive their own TEB reports.

On October 21, 2019, the WHS AGC 2 notified the contract specialist of the updated list of enclosures that included the TEB reports in the debriefing package and instructed the contract specialist to gather the additional reports. However, the WHS AGC 2 did not specify which contractor's TEB reports to include. The contract specialist said that he interpreted "TEB (Interim Proposal Revisions (IPR) Factors 2-7 & Final Proposal Revision (FPR) Factors 2-8)" to mean all the TEB Reports (including AWS and Microsoft TEB reports) in the debriefing to AWS. The contract specialist told us that based on this understanding, he created an electronic folder titled "A57 - Unsuccessful Offeror Notification - Debriefing" and saved the updated letter to AWS along with the 26 TEB reports regarding the interim proposal and final proposal evaluations for Microsoft and AWS in the folder. The contracting specialist told us that he assumed the WHS AGC 2 would review the contents of the folder before releasing the documents.

However, the WHS AGC 2 and the PCO both told us that they could not recall if they were aware of the folder, nor could they recall if they ever accessed the folder created by the contracting specialist. The WHS AGC 2 and the PCO told us that they did not review the contents of the folder before the debriefing.

The WHS AGC 1 told us that she had asked the WHS AGC 2 to review exact copies of the e-mails with all the attachments that were to be sent out on award day at least one day in advance. She told us that sending practice e-mails was standard operating procedure for award notifications. The WHS AGC 2 told us that the contract specialist was supposed to send him a test e-mail with the unsuccessful contractor notification letter and all the AWS debriefing documents attached. He told us that on October 21, 2019, the contract specialist sent him two test e-mails, one to AWS and the other to Microsoft, but neither included any attachments. He said that he was therefore unable to review the documents the contract specialist planned to provide before the actual e-mail was sent to AWS. The WHS AGC 2 also told us that he did not ask the contract specialist to send him test e-mails with the attachments, nor did he ever receive any test e-mails with attachments. Instead, he asked the contract

specialist to confirm if he would be including the Microsoft debriefing documents with the Microsoft notification letter. The contract specialist replied that WHS/AD would provide the document to Microsoft upon request.

Between October 21 and October 24, 2019, the contract specialist and the WHS AGC 2 exchanged multiple e-mails regarding what information should be redacted in the SSDD, SSAC, SSEB, and PEB Reports. The WHS AGC 2 told us that he and the contract specialist disagreed about what information to redact and how much to redact. The contract specialist favored redacting more information while the WHS AGC 2 favored redacting less information for more transparency. On October 24, 2019, the contract specialist e-mailed the WHS AGC 2 expressing his concern that the WHS AGC 2 had removed some proposed redactions from the SSDD, SSAC, SSEB, and PEB reports, which, in his view, would allow too much information to be released in violation of FAR 15.506(e). The contract specialist told us that typically, the process of determining redactions is collaborative between the contracting team and WHS OGC. However, the WHS AGC 2 told us that he did not come to an agreement with the contract specialist because “there is no agreement as we both have equal stakes in the outcome. I am the legal advisor [and] the procurement [contracting officer] makes the final decisions on all procurement related matters.” In the end, the PCO instructed the contract specialist to defer to the WHS AGC 2’s determination regarding the redactions.⁹⁸

Additionally, the contract specialist told us that either WHS AGC 1 or 2 advised him not to redact the Source Selection Team names. Neither WHS AGC 2 nor the PCO consulted with or informed the Office of the CIO (OCIO), Office of the USD(A&S) (OUSD[A&S]), the CCPM, or their own leadership when making the decision to release the Source Selection Team names. The PCO stated to us that she relied on the advice of the WHS AGC 2 who told her that the redactions were legally sufficient.

The contract specialist told us the WHS AGC 2 was not timely in his review, requiring the contract specialist to repeatedly ask about the progress of the WHS AGC 2’s review of the redacted documents. The PCO told us that she was growing increasingly frustrated with the WHS AGC 2 over the delay in finalizing the redactions and complained to the WHS AGC 1, who stated that she and the WHS AGC 2 had discussed and agreed on what information needed to be redacted before the WHS AGC 1 left on October 15, 2019, so she could not explain his delay. The PCO also called the CCPM to ask for her assistance in obtaining the redacted documents from the WHS AGC 2. The CCPM told us that, during the week of the contract award, she contacted the WHS AGC 2, on behalf of the PCO, to urge him to get the redacted reports to the contracting specialist as soon as possible. The PCO told us that, typically, she would have received the redacted reports weeks before the award date. However, according to the PCO, she had assigned a due date for “finalize legal review of redacted documentation” of at least one day before award of the contract to ensure she would have time to review the redacted reports.

b. Technical Problems Before and on Contract Award Day

The PCO told us that the JEDI Cloud team experienced multiple problems that contributed to the high-pressure environment on the JEDI Cloud contract award day. The PCO stated that Procurement

⁹⁸ The WHS AGC 2 was a new member of the JEDI Cloud team having joined in September 2019, nearly 2 years into the procurement and less than 2 months before the contract award announcement. As a result, the WHS AGC 2 was not as knowledgeable about the JEDI Cloud procurement as the WHS AGC 1, whom he was replacing upon her departure from WHS on October 15, 2019.

Desktop-Defense (PD²), DoD's contract management support system, was being upgraded between October 11 and October 16, 2019, and unavailable for use, which delayed the entry of the JEDI Cloud award data and funding document information.

On October 23, 2019, the Administrative Contracting Officer (ACO) attempted to create the award document in the PD² system, but received error messages. Adding to the delay, the ACO told us that she experienced problems connecting to the upgraded version of PD² from the CCPO. The ACO also experienced errors when attempting to enter the first task orders into PD², which required her to engage with the WHS E-business Program Manager to find a work-around. The PCO stated that these technological issues with PD² contributed to the delay in getting the contract documents to the contract specialist.

c. Significant Events on Contract Award Day

On October 25, 2019, JEDI Cloud contract award day, the PCO tasked the contract specialist to prepare the e-mails to Microsoft and AWS with the appropriate documents attached. Below is a timeline of events on October 25, 2019.

- 11:00 a.m. – The WHS AGC 2 completed his review and provided final redaction recommendations for the SSDD, SSAC, SSEB, and PEB reports to the contract specialist. The WHS AGC 2 told us that he could not recall why he did not provide the final redacted reports before the day of award. He stated, "I'm sure there were other issues we had going on in our office. We were still working through the actual award and getting all of the ducks in a row."
- 2:00 p.m. – The PCO instructed the contract specialist to prepare the e-mails and attachments and have them ready for her review. At that time, the contract specialist had not yet received the final contract documents for Microsoft from the ACO.
- 3:40 p.m. – The technical issues with PD² were resolved. The contract specialist received the contract award documents from the ACO. He had also started "blacking-out" information marked for redaction in the SSDD, SSAC, SSEB, and PEB reports.
- 4:30 p.m. – The contract specialist used the PCO's laptop and e-mail address to prepare the e-mails to Microsoft and AWS. The PCO told us that she performed a cursory review of the redacted documents, but failed to ensure that the information contained within the reports could not be used to make a point-by-point comparison or include proprietary information, due to the time crunch. The PCO told us she also did not question the unredacted SST names in the reports. She told us that she "knew that we were giving [the contractors] unusually more information on purpose but because these things came in so late, I wasn't completely aware of the level of information [to be released]." The PCO told us that the ACO confirmed the decision to release the SST names with the WHS AGC 2. She also told us that in her experience, redacting the SST names had just been good practice, not required by policy. The PCO told us that she also performed a cursory review of the e-mails, which included verification of the addressees and the approved language in the body of the e-mail; however, she said that

she did not review the attachments because the file names were condensed such that the entire name was not visible. She told us that she would have had to open each attachment to review it, which would have delayed sending the award notification email. Instead, the PCO confirmed with the contract specialist that all the documents were attached and said she made a judgment call to send the e-mails as prepared by the contract specialist. She stated she had to meet the scheduled award announcement time of 4:45 p.m.

- 4:45 p.m. (scheduled award announcement time) – The e-mails the PCO sent to Microsoft and AWS could not be delivered due to the large size of the attachments. The PCO told us that the contract specialist had conducted a test email earlier in the day by sending the notification letters and attachments to himself from his Defense Digital Service (DDS) Google email account, which was not an adequate test to ensure the email file size was acceptable, according to the PCO. The contract specialist did not send the test emails to the WHS AGC 2 for review, nor did the WHS AGC 2 ask the contract specialist for the test emails as WHS AGC 1 had instructed before she left. The PCO then directed the contract specialist to prepare multiple e-mails to Microsoft and AWS that distributed the attachments to meet Microsoft and AWS's e-mail file size restrictions. The PCO sent a message to the JEDI team asking for a lawyer to "call into the CCPO." The PCO told us that there were no other decision-makers in the room at this time because the CCPM had moved to the DoD CIO's office to notify Congress, DoD senior officials, and the public about the JEDI Cloud contract award. Additionally, the WHS AGC 2 told us, "If they needed me, they had my phone number, but it would just be me standing around not doing anything if I was in the CCPO office. And I had other tasks and other procurements that I [sic]— legal advice that I needed to give. So, it would have been a waste of my time." The WHS AGC 1 told us that had she been there on award day, she would have been in the room with the PCO throughout the day and able to review the notification and debriefing emails.
- 4:47 p.m. – The PCO successfully sent three e-mails that notified Microsoft as the JEDI Cloud contract award winner with the attached JEDI Cloud contract.
- 4:47 p.m. – The PCO relinquished her laptop to the contract specialist when the e-mails to AWS came back undelivered because of the e-mail file size limitations. The contract specialist then prepared eight separate e-mails with the redacted SSDD, SSAC, SSEB, and PEB reports, as well as the 26 unredacted AWS and Microsoft TEB Reports for Factors 2-6 attached.
- 5:57 p.m. – The contract specialist, using the PCO's computer, successfully sent all eight e-mails to AWS.

d. Significant Events After Contract Award Day

On October 29, 2019, at 3:22 p.m., AWS submitted 265 post-award enhanced debriefing questions to the PCO. After reviewing the questions, the PCO and CCPM realized that AWS must have had access to additional source selection information because AWS included details about Microsoft's proposal in its questions. Immediately after noticing this information, the CCPM asked the contract

specialist to review the e-mails sent to AWS on October 25, 2019. The contract specialist confirmed that 13 TEB reports regarding Microsoft's interim and final proposal revisions had been disclosed to AWS.

We asked the contract specialist why the 13 TEB reports were disclosed to AWS. He told us that when the WHS AGC 2 instructed him to include the additional TEB reports as listed in the letter to the unsuccessful contractor, the WHS AGC 2 did not specify which contractor's TEB reports to include. The contract specialist told us, "Based on ... the unsuccessful offeror language, it [the language in the letter] just said ... Factors 2 through 8 TEB reports. It didn't specify an offeror, and I took that as all of the reports for all of the factors, and that was my mistake that I understood it as all reports for all factors."

The WHS AGC 2 told us that he assumed that an experienced contract specialist would know to include only the AWS TEB Reports in the debriefing package to AWS. However, the PCO told us that the WHS AGC 2 advised her to release as much information as possible to the unsuccessful contractor, including reports she does not usually release, as part of the written debriefing for the JEDI Cloud procurement.

On the evening of October 29, 2019, the CCPM called Microsoft and AWS to notify them of the disclosure to AWS of source selection information related to Microsoft. On October 30, 2019, the WHS AGC 2 sent AWS a letter stating, "It was unlawful for any unauthorized person, including competitors such as AWS, to posses[s] or use such information, even if inadvertently disclosed to that person," and requested AWS to provide WHS with a statement describing all steps AWS took to mitigate the impact of the disclosure. In addition, the letter stated that it was unclear why AWS did not immediately notify or consult with DoD officials about the disclosure and instead chose to use that information to prepare its debriefing questions. Furthermore, the letter stated, "All offerors have an obligation to conduct themselves with integrity and in accordance with the law."

On November 1, 2019, AWS responded to WHS' letter. In its response letter, AWS stated that it had no knowledge or indication that the DoD had released any information improperly. AWS stated that it "reasonably presumed that DoD appropriately and intentionally provided the Evaluation Reports to AWS as part of AWS's JEDI briefing." AWS further stated that it reasonably used the entirety of the debriefing materials when preparing its debriefing questions and it was only after receiving the questions that the DoD asserted that it had released the materials in error. AWS also provided an affidavit in which the AWS Director of DoD Programs described AWS's efforts to find and destroy the Microsoft reports. AWS provided a list of 71 AWS employees, including engineers, attorneys, and technical architects, that had received the Microsoft reports.

Also on November 1, 2019, a team from DoD OGC and Defense Pricing and Contracting initiated a review of the disclosure of Microsoft TEB reports to AWS. On December 17, 2019, the team concluded that the decision to notify the unsuccessful offeror and simultaneously provide a written debriefing for the strategic purpose of starting the protest clock immediately "created extraordinary pressure on the contracting team" and did not allow for the proper amount of time that all the tasks required. The team concluded that the disclosure was inadvertent and said it found no evidence of a deliberate intent to release Microsoft information to AWS. The team also recommended WHS contracting leadership reexamine the use of written debriefs by default because it was unlikely that the disclosure would have occurred during an oral debriefing.

On November 5, 2019, the Administrative Contracting Officer (ACO) sent a letter to AWS with the responses to its Post-Award Debriefing questions. In her letter, the ACO provided responses to questions that she determined were “relevant and within the scope of a debriefing.” Specifically, from the 265 questions AWS submitted, the ACO did not respond to 139 questions. The ACO stated that 25 questions were outside the debriefing scope, in accordance with FAR 15.506, and 114 questions were derived from the improper disclosure of Microsoft’s proprietary information and, therefore, also outside the scope of AWS’s debriefing.

On November 6, 2019, Mr. Sanders, Director of WHS Acquisition Directorate, sent an e-mail to the PCO, the ACO, the Contract Specialist, and the WHS AGC 2, asking if the SST member names were intentionally unredacted. The WHS AGC 2 responded:

It was my intention to leave the names of the evaluators un-redacted...We did not redact the names because there was no reason to redact...My understanding was that the names were kept private during evaluation to minimize the chance of improper (external) influence. After the evaluation was complete, this was no longer an issue.

e. Violations of the Federal Acquisition Regulation and DoD Source Selection Procedures

The Contract Specialist, on behalf of the PCO, disclosed the Microsoft TEB reports for Factors 2-8 to the unsuccessful offeror, AWS, during the debriefing process. This was a violation of the FAR and DoD policies. Additionally, against DoD policy, the PCO authorized the release of the SST names as part of the SSDD, Source Selection Advisory Council (SSAC), Source Selection Evaluation Board (SSEB), and the Price Evaluation Board (PEB) reports.⁹⁹

Improper Disclosure of Source Selection and Proprietary Information

For the JEDI Cloud contract, the DoD was required to conduct and document debriefings in accordance with the FAR and the DoD Source Selection Procedures. These documents specify the information and documentation that can and cannot be provided to contractors during debriefings. According to FAR 15.506(d), a post-award debriefing should include, at a minimum:

- the Government’s evaluation of the significant weaknesses or deficiencies in the contractor’s proposal;
- the overall evaluated cost and technical rating of the successful contractor and the debriefed contractor;
- the overall ranking of all contractors;

⁹⁹ We also determined that the PCO should not have relinquished control of her laptop with her Common Access Card to allow the contract specialist to send the notification and debriefing e-mails to AWS and Microsoft. However, we could not identify a DoD policy that specifically prohibits this conduct. However, the Defense Information Systems Agency (DISA) network user agreement requires that users of all DoD information systems read, understand, and comply with said requirements, including the statement, “I understand that I am responsible for all actions taken under my account(s) either as an authorized or privileged user.”

- a summary of the rationale for the award;
- for acquisitions of commercial items, the make and model of the item to be delivered by the successful contractor; and,
- reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

FAR 15.506(e) states that the debriefing shall not include point-by-point comparisons of the debriefed contractor's proposal with those of other contractors. In addition, the debriefing shall not reveal any information prohibited from disclosure by FAR 24.202 or exempt from release under the Freedom of Information Act (5 U.S.C. § 552 [2016]), including trade secrets; privileged or confidential manufacturing processes and techniques; commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and the names of individuals providing reference information about a contractor's past performance.¹⁰⁰

FAR 3.104-4(a) states that no person or other entity may disclose contractor bid, proposal information, or source selection information to any person other than a person authorized, in accordance with applicable agency regulations or procedures, by the agency head or the contracting officer to receive such information. FAR 3.104-4(b) states that contractor bid or proposal information and source selection information must be protected from unauthorized disclosure in accordance with applicable law and agency regulations. In addition, FAR 3.104-4(f)(4) does not authorize the disclosure of bid or proposal information or source selection information after award if disclosure, solicitation, or receipt is prohibited by law.

DFARS 215.300 states, "Contracting officers shall follow the principles and procedures in Director, Defense Procurement and Acquisition Policy memorandum dated April 1, 2016, entitled 'Department of Defense Source Selection Procedures,' when conducting negotiated, competitive acquisitions using FAR part 15 procedures." The DoD Source Selection Procedures state that a redacted version of the Source Selection Decision Document (SSDD), which removes all proprietary and source selection material can be provided at the debriefing to anyone not authorized to receive the proprietary or protected material (for example, an unsuccessful contractor). The DoD Source Selection Procedures Debriefing Guide also states that the debriefing team may not disclose detailed information regarding the strengths, weaknesses, or deficiencies in other proposals.

We reviewed the unsuccessful contractor notification e-mails sent to AWS with the attachments, including the redacted SSDD, SSAC, SSEB, and PEB reports, 13 unredacted AWS TEB reports, and 13 unredacted Microsoft TEB reports. We also reviewed the results of the independent review conducted by DoD OGC and DPC on November 1, 2019, and the chronology of events leading to

¹⁰⁰ FAR Part 24, "Protection of Privacy and Freedom of Information," Subpart 24.2, "Freedom of Information Act," Section 24.202, "Prohibitions" states that a proposal in the possession or control of the Government, submitted in response to a competitive solicitation, shall not be made available to any person under the Freedom of Information Act. The Freedom of Information Act (5 U.S.C § 552 [2016]) exempts from release, pursuant to a FOIA request, trade secrets and privileged or confidential commercial or financial information obtained from a person.

the disclosure created by the JEDI team on November 2, 2019. We interviewed the WHS AD Director, WHS General Counsel, PCO, WHS AGC 2, CCPM, contract specialist, and the SSEB Chair. We also obtained and reviewed letters from Microsoft and Microsoft's outside counsel stating that the Microsoft TEB reports contained Microsoft's trade secrets; confidential, proprietary, and competition-sensitive business and technical information; and source selection information.

Based on our review, we determined that the contract specialist misunderstood the direction given to him by the WHS AGC 2 and thought that all of the TEB reports for both contractors should be included in the debriefing to AWS. He did not willfully or deliberately violate the FAR or DoD Source Selection Procedures. However, he did not verify that his interpretation of the WHS AGC 2's instruction was correct, contributing to the misunderstanding. His disclosure was based on a misunderstanding of the instruction given to him.

We concluded that the disclosure of Microsoft's proposal and source selection information to AWS, who was unauthorized to receive such information, violated FAR 3.104-4(a) and FAR 3.104-4(b). We also determined that the disclosure of Microsoft TEB reports, which contained privileged and confidential Microsoft information, to AWS violated FAR 15.506(e). In addition, while the DoD is not permitted in a debriefing to disclose a point-by-point comparison of the AWS and Microsoft proposals per FAR 15.506(e), we determined that the disclosure of the Microsoft TEB reports, which contained source selection analysis information, including strengths and weaknesses, to AWS along with its own TEB reports, would allow AWS to make a point-by-point comparison of the proposals. We also concluded that DoD provided AWS with detailed information regarding the strengths, weaknesses, and deficiencies of the Microsoft proposal, which is inconsistent with the DoD Source Selection Procedures Debriefing Guide.

We also concluded that the WHS AGC 2 provided vague instructions to the contract specialist regarding the reports to include in the debriefing to AWS. The WHS AGC 2 updated the unsuccessful contractor notification letter with the language "TEB (Interim Proposal Revisions (IPR) Factors 2-7 & Final Proposal Revision (FPR) Factors 2-8)" and said he assumed – without verifying-- that the contract specialist would know to include only AWS' TEB reports to AWS. This assumption may be reasonable for a typical procurement, but under the unusual circumstances of the JEDI Cloud procurement, including the unusual amount of information that WHS planned to release, the WHS AGC 2 should have provided more precise instructions regarding the reports to be included in the AWS debriefing. In addition, the AWS AGC 2 should have provided his final redaction recommendation to the PCO in a more timely manner, rather than late on the day of award. As a result, the WHS AGC 2 contributed to the confusion and improper disclosure of information to AWS.

We also concluded that the PCO was ultimately responsible for reviewing and ensuring that the debriefing documents were accurate and complete before sending them to the unsuccessful contractor. We recognize the challenges that the PCO faced on award day that impacted her ability to thoroughly review the redacted reports or attachments to the e-mails, but she did not fully review the disclosures, as she should have.

Inadequate Redactions of Source Selection Team Member Names

The DoD Source Selection Procedures states “the PCO shall conduct and document debriefings in accordance with Appendix A – Debriefing Guide and FAR 15.505 or 15.506, as applicable.”¹⁰¹ It also states “the PCO is encouraged to use the debriefing guide provided in Appendix A”. The Debriefing Guide in the DoD Source Selection Procedures states that the names of individuals on the Source Selection Team (SST) who did not participate in the debriefing should not be disclosed. The guide also states “to prevent offerors from contacting individuals after the debriefing and to avoid creating tension in ongoing working relationships on existing Government contracts, do not disclose the names of individual evaluators or members of the SST (for example, the SSEB and the SSAC).”

During our interviews, we learned that neither Mr. Sanders, the Director of WHS Acquisition Directorate, nor the PCO, were aware of the DoD Source Selection Procedures policy on the disclosure of the SST names. When we asked the WHS AGC 2 about his familiarity with the DoD Source Selection Procedures, he told us that he was aware of the Procedures and Appendix A - Debriefing Guide. He also told us that he was aware of the redaction requirements prescribed in the Debriefing Guide. However, he said that his responsibility was to advise the PCO and his advice was based on his understanding of all the policies, procedures, and laws at the time he gave the advice.

The acquisition professionals we interviewed, including OUSD(A&S) and OCIO senior officials, the PCO, CCPM, stated that in their experience, they have not released the names of the source selection team members aside from occasionally releasing the name of the SSA.¹⁰² However, for the JEDI Cloud procurement, the WHS AGC 2 advised the PCO to release all the SST names and that releasing the names was in accordance with DoD policy.

When asked why he advised the PCO to release the Source Selection Team names contrary to DoD policy, the WHS AGC 2 stated:

In this case, in JEDI, there were allegations that the President influenced parties of the Source Selection Team. To be as open and transparent as possible...I thought it was appropriate to have the [SST] names unredacted. I don't think it's against policy. It is a recommendation that I made that may not be in line with what we should do...but it is a chance, a choice that we made.

When asked to elaborate on his statement that “we did not redact the names because there was no reason to redact,” the WHS AGC 2 told us he could not.

The ACO and CCPM both told us reasons not to release the SST names, including to protect the SST members' from harassment, to prevent any future employment repercussions, and to uphold the commitment made to the SST to keep their names anonymous. Additionally, the Debriefing Guide states that “in order to avoid creating tension in ongoing working relationships on existing Government contracts, do not disclose the names of individual evaluators or members of the SST.”

¹⁰¹ Gutierrez de Martinez v. Lamagno, 515 U. S. 417 (1995), “Though ‘shall’ generally means ‘must,’ legal writers sometimes use, or misuse, ‘shall’ to mean ‘should,’ ‘will,’ or even ‘may.’”

¹⁰² The DoD Source Selection Procedures permit the release of the name of the SSA during post-award debriefings.

When asked if he made the PCO aware that his decision to release the SST names was contrary to DoD policy, the WHS AGC 2 stated, “We don’t get into details with the [PCO] of every single decision we make on the advice we give her. We give her advice that she can take and ask questions as necessary.” However, the PCO told us that she first learned of the WHS AGC 2’s recommendation to release the SST names when she received the redacted reports from him on award day. She told us that by the time she received the reports, “it was time to go.” The PCO told us that she relied on the assurance from the WHS AGC 2 that the redactions were completed in accordance with all DoD policies. She further stated that she had no reason to not rely on the advice of the WHS AGC 2. The PCO also told us that she assumed the WHS AGC 2 took so long to finalize the redacted documents because he was making sure that the redactions were correct.

We determined that the decision-making throughout the JEDI Cloud procurement was a collaborative effort among the WHS Acquisitions Directorate, General Counsel, and the CCPO. Yet, in this case, the WHS AGC 2 did not consult with the other JEDI Cloud interested offices regarding the release of the SST names. In particular, neither the PCO nor the WHS AGC 2 consulted with their senior leadership, the OUSD(A&S), the OCIO, or the CCPO regarding the release of the SST names. Had they consulted with the other interested offices, they would have learned that the CCPM had made repeated assurances to the Source Selection Team members in the past that the JEDI team would keep their names confidential and that during his confirmation hearing before Congress, Mr. Deasy stated, “We have kept the identity of every member of the source selection team anonymous throughout this process.” Furthermore, the PCO could have realized that releasing the names was inconsistent with the DoD Source Selection Procedures.

We determined that the WHS AGC 2 provided the PCO with advice contrary to DoD policy and without informing her that the advice was contrary to it. We determined that the WHS AGC 2’s reason for advising the release of the SST names was not compelling in light of the multiple reasons not to release the SST names. Therefore the PCO should have followed the Debriefing Guide and redacted the SST names. We also determined that the PCO relied on the advice provided by WHS AGC 2 because she was unaware of the DoD Source Selection Procedures redaction requirements and the WHS AGC 2 assured her the redactions were completed in accordance with all DoD policies. Additionally, the WHS AGC 2 provided the final redacted reports late, which did not allow the PCO adequate time to review the reports or question the final redactions.

f. OIG Conclusions – Disclosure of Source Selection and Proprietary Information

We reviewed relevant DoD and Federal policy and procedures, reviewed the documents released to each contractor, and interviewed the people involved in the JEDI Cloud award and debriefing. We determined that the DoD violated FAR 15.506(e) and FAR 3.104-4 by disclosing unredacted Microsoft TEB reports to AWS, which included Microsoft proprietary, proposal, and source selection information. As a result of the disclosure of the source selection information, the DoD improperly disclosed to AWS proprietary information it should not have received.¹⁰³ By disclosing Microsoft’s proprietary information, the DoD also potentially provided AWS an unfair advantage in the cloud services marketplace.

¹⁰³ On December 9, 2019, AWS filed a Bid Protest in the Court of Federal Claims.

In addition, we determined that the PCO, the WHS AGC 2, and the contracting specialist failed to properly redact the SSDD, SSAC, SSEB, and PEB reports and disclosed the names of the SST members during the debriefings which was inconsistent with the DoD Source Selection Procedures. The WHS's disclosure of the SST names could potentially expose those members to the risk of contact from contractors regarding their participation in the JEDI Cloud Source Selection or create tension between the evaluator and the contractor in future interactions.

g. Recommendations

- 2. We recommend that the Chief Management Officer, in coordination with the DoD General Counsel, consider administrative action against appropriate individuals for failing to review the redacted reports and attachments to the debriefing e-mails, and disclosing proprietary, proposal, and source selection information.**

Management Comments Required. The Chief Management Officer did not respond to the recommendation in the report. Therefore, the recommendation are unresolved. We request that the Chief Management Officer provide comments on this final report.

- 3. We recommend that the Principal Deputy General Counsel, as Chair of the DoD OGC/Defense Legal Services Agency Professional Conduct Board, in coordination with the WHS General Counsel, determine whether disciplinary action should be taken against appropriate individuals under attorney performance standards for failing to review the redacted reports and attachments to the debriefing e-mails, and disclosing proprietary, proposal, and source selection information.**

Management Comments Required. Based on Management's response to the draft report, we have drafted and directed Recommendation 3 to the Principal Deputy General Counsel and WHS General Counsel. As a result, the Principal Deputy General Counsel and WHS General Counsel did not have an opportunity to respond to the recommendation in the report. Therefore, the recommendation is unresolved. We request that the Principal Deputy General Counsel and WHS General Counsel provide comments on this final report.

- 4. We recommend that the Director of the WHS Acquisition Directorate, in coordination with the WHS General Counsel:**
 - a. Require training for WHS officials handling acquisition-related matters regarding the contents of the DoD Source Selection Procedures Debriefing Guide with special attention to Section A.8.3, Information Not Appropriate for Disclosure.**
 - b. Develop a standard redaction policy applicable to all acquisitions to eliminate the ambiguity regarding redactions of source selection information, particularly Source Selection Team names.**

Management Comments Required. The WHS Acquisition Directorate Director did not respond to the recommendations in the report. Therefore, the recommendations are unresolved. We request that the WHS Acquisition Directorate Director provide comments on this final report.

5. White House Influence on the JEDI Cloud Procurement

a. Media Reports on Alleged White House Influence

Beginning in March 2018, the media reported on alleged White House influence on the JEDI Cloud procurement. Various media outlets reported public statements by President Trump that were critical of Amazon, the parent company of Amazon Web Services (AWS), a competitor in the JEDI Cloud procurement, and of Amazon founder Jeff Bezos. Mr. Bezos also owns *The Washington Post*, which the President has criticized in public statements.

For example, on March 28, 2018, *Federal Computer Week* published a story about a full page advertisement that a non-profit organization had placed in the *New York Post*. The first line in the advertisement stated, “President Trump: Your Defense Department is set to award a no-bid, ten-year contract for all its IT infrastructure to Administration-enemy Jeff Bezos’ Amazon.” The *Federal Computer Week* article stated that President Trump “is a frequent critic of [Mr.] Bezos, who also owns *The Washington Post*.”¹⁰⁴

The following week, *Bloomberg* and *Business Insider* published articles reporting that Oracle CEO Safra Catz, “a close ally of the President” and a member of President Trump’s transition team, had a “private dinner” with the President at the White House. According to these reports, Oracle was competing with Amazon for a potential JEDI Cloud contract, and during her dinner with President Trump Ms. Catz criticized the JEDI Cloud procurement process. The articles also reported that the President had been critical of Amazon in the wake of DoD’s draft JEDI Cloud RFP release on March 7, 2018.

Other media stories published during 2018 reported that members of industry and Congress were dissatisfied with the JEDI Cloud RFP, which they believed advantaged Amazon over other potential contract bidders. The stories also reported on President Trump’s criticisms of Mr. Bezos, Amazon, and *The Washington Post*. For example, a March 29, 2018, *New York Times* article suggested that *The Washington Post*’s negative coverage of the President caused him to react by expressing disdain for Amazon. The President reportedly stated that Amazon put small retailers out of business, took advantage of the U.S. Postal Service, and did not pay enough taxes.

These and similar news reports about the President’s public comments against Amazon, Jeff Bezos, and *The Washington Post* generated allegations that the President may have influenced Secretary Mattis, Secretary Esper, and DoD JEDI Cloud source selection officials to prevent Amazon from winning the contract. For example, *Bloomberg News* and *The Washington Post* headlines in August 2019 stated, “Trump Attack on Cloud Bidding Gives Pentagon Chief Hard Choices,” and, “After Trump Cites Amazon Concerns, Pentagon Reexamines \$10 Billion JEDI Cloud Contract Process.”

These allegations intensified after the DoD announced on October 25, 2019, that it had awarded the JEDI Cloud contract to Microsoft, not Amazon, which media reports had identified as the “front runner” to win the contract. On October 26, 2019, the day after DoD announced that Microsoft had won the JEDI Cloud contract, CNN reported that a former member of Secretary Mattis’ staff, Mr. Guy Snodgrass, had written a book alleging that President Trump “personally got involved in who would win” the JEDI Cloud contract. The CNN report included an excerpt from the book, which stated,

¹⁰⁴ The advertisement has been removed from the web page.

“In the summer of 2018, Trump called and directed [Secretary] Mattis to ‘screw Amazon’ out of the opportunity to bid on the JEDI Cloud contract.”

After the October 2019 contract award announcement, we expanded the scope of our review to include the JEDI contract source selection process, and determine whether it complied with applicable standards, as discussed above. As part of that review, we also sought to determine whether the statements from President Trump or any White House officials improperly influenced the JEDI Cloud source selection, either directly by communicating with DoD officials, or indirectly through public comments or criticisms that DoD officials may have read or heard.

To conduct our review of alleged White House influence, we interviewed 25 witnesses from six groups or organizations related to the source selection. These groups were DoD senior executives, who were the most likely to have had direct contact with the White House; other DoD officials who reportedly heard Secretary Mattis talk about a phone call with President Trump; the OCIO, which oversaw the CCPO; the CCPO, which was responsible for managing the JEDI Cloud program; the DDS, which initiated the procurement and provided subject matter expertise; and the source selection team, which evaluated proposals, made recommendations, and ultimately selected Microsoft. We also interviewed the PCO, who helped execute the procurement and awarded the contract. The witnesses were:

- Secretary Esper;
- Deputy Secretary Norquist;
- Mr. Eric Chewning, Secretary Esper’s former Chief of Staff;
- Secretary Mattis;
- Deputy Secretary Shanahan;
- Mr. Kevin Sweeney, Secretary Mattis’ former Chief of Staff;
- Admiral Craig Faller, former Senior Military Assistant to Secretary Mattis and current Commander, U.S. Southern Command;
- Mr. Robert Hood, Assistant Secretary of Defense for Legislative Affairs;
- Mr. Paul Koffsky, DoD Deputy General Counsel;
- Mr. Dana Deasy, DoD CIO;
- Mr. Peter Ranks, Deputy CIO for Information Enterprise;
- The Source Selection Authority (SSA);
- (FOUO-SSI) [REDACTED] and Chair, SSAC;
- All nine source selection evaluation factor team chairpersons;
- The Cloud Computing Program Manager (CCPM) / former DDS General Counsel;
- Mr. Chris Lynch, former Director, DDS; and
- The PCO.

We also reviewed slide presentations and other documents from JEDI Cloud procurement briefings presented to Secretary Esper and to White House officials from June 10 through September 23, 2019. We also reviewed congressional correspondence related to the JEDI procurement and the U.S. Senate confirmation hearings of Secretary Esper and Deputy Secretary Norquist. We were not able to interview White House personnel for this investigation.

White House Communications and Asserted Privileges

Before we contacted Secretary Esper and Deputy Secretary Norquist to schedule interviews, we had already interviewed 18 of the 25 witnesses, including Secretary Mattis and Deputy Secretary Shanahan.

When we sought to interview Secretary Esper and Deputy Secretary Norquist, the DoD OGC advised us that they would not answer questions related to any communications with President Trump, members of the President's staff, or other White House officials. According to DoD OGC officials, the White House did not authorize the Secretary or the Deputy Secretary to disclose information that would be covered by what was referred to as the "presidential communications privilege." DoD OGC officials stated that the President, not the Secretary, controls access to presidential communications within the Executive Branch, and as a general matter the White House did not view the requirements of the Inspector General Act to overcome the President's constitutional authority to control presidential communications.

As a result, the witnesses were instructed not to answer any questions about communications between DoD officials and the President or White House officials regarding the JEDI contract. According to DoD OGC officials, the DoD would need White House Counsel approval before any presidential communications could be disclosed to the DoD OIG.

We informed the DoD OGC that we understood the concept of executive privilege, but the release of any information potentially protected by the presidential communications privilege to the DoD OIG would not waive the privilege. The DoD OIG is part of the Executive Branch and therefore distinct from other entities outside the Executive Branch that may seek such privileged information. We also cited to the Inspector General Act of 1978, as well as DoD issuances, regarding the DoD OIG's authority to investigate matters related to DoD operations, such as the award of the JEDI contract. Further, we informed the DoD OGC that we routinely receive and maintain information provided by DoD components, including information identified as proprietary, classified, or privileged, and that we safeguard and do not further disclose any information in OIG files and reports that is asserted to be privileged, including information potentially protected by the presidential communications privilege.

Despite our investigative authorities and our assurances to safeguard the information, DoD OGC officials restated that they did not control the privilege, and that the White House had not authorized the Secretary, Deputy Secretary, or other DoD officials to disclose to the DoD OIG communications between the White House and DoD officials related to the JEDI contract. While we disagreed with the DoD OGC's opinion on the presidential communications privilege with respect to our investigation, we agreed to allow a DoD OGC representative (Agency Counsel) to be present during our interviews of Secretary Esper and Deputy Secretary Norquist for the sole purpose of objecting to the witness responding to any questions that would elicit information about meetings or communications with the President or his advisors and staff that they believed were exempt from disclosure to the OIG because of the need to protect "presidential communications."

The DoD OGC also insisted that the arrangement apply to our interviews of other DoD officials, including former Chief of Staff to Secretary Mattis, Mr. Sweeney; former Senior Military Assistant to Secretary Mattis, Admiral Faller; Assistant Secretary of Defense for Legislative Affairs, Mr. Hood; DoD

Deputy General Counsel, Mr. Koffsky; and former Chief of Staff to Secretary Esper, Mr. Chewning. At the beginning of these seven interviews, Agency Counsel made the following statement:

I am here for the express purpose of asserting Presidential Communications Privilege. That privilege extends to conversations between the President and representatives of the Department of Defense, anyone on the White House staff and the Department of Defense, and any communications internal to the Department of Defense concerning information they have received from the White House or staff. This privilege will also encompass any questions concerning the very existence of any meetings concerning both Amazon and Oracle. The Office of General Counsel would like to review the recording transcript of this interview before the transcript would be used in litigation or otherwise produced to entities outside of the Pentagon. Should the witness make an inadvertent disclosure of Presidential communications, we reserve the right to assert the Presidential communications privilege retroactively. We will not be asserting any other privileges or objections in this interview, but we reserve the right to assert any other form of Executive Privilege that might pertain to the interview.

In each of these interviews, Agency Counsel instructed the witnesses not to answer our questions related to communications between DoD officials and White House officials about the JEDI Cloud procurement, or instructed them to answer only to the extent that their answers would not include information about White House communications.

Some of our questions pertained to media reports about potential presidential communications. However, Agency Counsel allowed witnesses only to confirm or deny statements attributed to them in such reports, and would not allow witnesses to elaborate on those statements and describe what they meant or who they heard from in the White House.

After we completed the seven interviews that Agency Counsel attended, we compiled a list of questions that Agency Counsel had instructed witnesses not to answer. We then provided Agency Counsel with this list of questions, separated specific to each witness, and requested that Agency Counsel convey these questions to the White House Counsel's Office for review and determination as to whether the President would in fact invoke the presidential communications privilege. The DoD OGC told us they then asked White House Counsel to review the list of questions and identify the subject areas, or specific questions, over which the President would assert the presidential communications privilege.

On February 25, 2020, the DoD OGC stated that White House Counsel was willing to allow witnesses to provide written answers to our questions where the presidential communication privilege was invoked; however, DoD OGC stated that no representation could be made as to the number or extent of questions that could be answered, and that any written responses would require further review by White House Counsel on the issue of maintaining the privilege. We carefully considered this request and concluded it would not be an appropriate and practical way to conduct our review and could prevent us from fully reviewing this matter. Written responses would not allow for direct follow-up questions and would not ensure that we received direct answers from the witnesses. This approach is also not consistent with our standard practice and how we treated other witnesses during this review. Further, we were not given any assurances that proceeding with this approach would result in answers

to the critical questions. This approach would also significantly delay issuance of this report. As a result, for all these reasons, we declined to proceed in this manner, and communicated the same to the DoD OGC.

In the following sections we first present evidence we received regarding White House interactions with Secretary Mattis, who had initiated the DoD's drive for improved data security and potential use of cloud technology. We also present evidence we received regarding White House interactions with Deputy Secretary Shanahan, whom Secretary Mattis tasked in 2017 with leading the DoD data security initiative and under whose leadership the cloud initiative became known in 2018 as the JEDI Cloud procurement. We then present the evidence we received regarding White House influence on Secretary Esper and Deputy Secretary Norquist, including Secretary Esper's review of the JEDI Cloud procurement, his later recusal from making decisions related to the JEDI Cloud acquisition program, and Deputy Secretary Norquist's subsequent decision to allow the procurement to proceed to a contract award.

We then present the evidence regarding contacts between White House officials and other DoD officials involved at various levels and stages of the JEDI Cloud procurement, including those who made the source selection decision in favor of Microsoft, and the evidence regarding whether DoD officials pressured DoD source selection team members to favor Microsoft over Amazon as a result of White House influence.

We end this section with our conclusions regarding whether the DoD was improperly influenced regarding the JEDI Cloud procurement.

b. White House Influence - Secretary Mattis and Deputy Secretary Shanahan

In a book published on October 29, 2019, retired Navy commander Guy Snodgrass, former Chief Speechwriter for Secretary Mattis, wrote:

In the summer of 2018, [President] Trump called and directed [Secretary] Mattis to "screw Amazon" by locking them out of a chance to bid for the \$10 billion networking contract known as "JEDI." [Secretary] Mattis demurred. Relaying the story to us during Small Group, [Secretary] Mattis said, "We're not going to do that. This will be done by the book, both legally and ethically."

We contacted Mr. Snodgrass regarding this excerpt. According to Mr. Snodgrass, the "Small Group" refers to a recurring meeting Secretary Mattis held with select members of his staff. The author told us that Deputy Secretary Shanahan, Admiral Faller, Mr. Sweeney, Mr. Koffsky, Mr. Hood, and then-DoD Assistant to the Secretary of Defense Dana White were at the Small Group meeting that he described in the book excerpt.¹⁰⁵ Mr. Snodgrass also informed us, through his attorney, that he stood "100%" behind the account of this incident in his book.

We asked Secretary Mattis about his communications with President Trump regarding the JEDI Cloud procurement. Secretary Mattis told us that he had "dozens" of telephone calls with the President,

¹⁰⁵ We interviewed all of these officials except Ms. Dana White, who had resigned from her position while DoD OIG investigated, and later substantiated, allegations of administrative misconduct against her, as described in our report of investigation issued publicly in July 2019.

and that he ate lunch with President Trump about once a week when their schedules permitted it. He said their conversations were mostly about foreign and military policies with respect to China and Russia, but “never this [JEDI].” Secretary Mattis stated that from his own reading of media stories, he was aware of President Trump’s “disgruntlement” with Amazon, Mr. Jeff Bezos, and *The Washington Post*, but he did not hear this from or discuss it with President Trump.

We asked Secretary Mattis specifically about the excerpt from his former staff member’s book that stated the President told him [Secretary Mattis] to “screw Amazon” out of a chance to bid on the JEDI Cloud contract. Secretary Mattis told us that he “cannot confirm” the former staff member’s account and added, “I don’t recall the President’s words on this [JEDI].”

We then asked Secretary Mattis if the President told him that he [the President] did not want Amazon to win the contract. Secretary Mattis stated:

I don’t recall that. It could have happened but I just don’t recall those words. Again, I knew his dissatisfaction with Amazon. I mean I knew that loud and clear. I knew that before he, you know if he and I spoke on the phone about it I was already aware from early on his views of Amazon, *Washington Post*, and Jeff Bezos, but I don’t recall us having a discussion about it.

Secretary Mattis told us that he did not recall the specific Small Group staff meeting that his former staff member described in his book. He added that, “from the very beginning the book is full of inaccuracies.”

Secretary Mattis stated that he did not remember talking to the President about JEDI or Mr. Bezos. He told us:

I don’t recall any time [of] him [the President] bringing up Jeff Bezos’ name.

...

I don’t recall [that] the President and I had a conversation about JEDI. It may have been, once in a while he would call me in the morning about something he read in the newspaper and had been thinking about. And sometimes he didn’t have all the details yet so I’d go back to him with details, but I know we never discussed the JEDI contract, the President and I, with any kind of substance or procedural way or how it could be influenced, just never happened.

We asked Secretary Mattis about any communications he may have had with White House officials other than the President about JEDI, Amazon, or other JEDI competitors. He said:

No. If I did it had to be in passing but I think I’d remember that because it would have been so odd, and I just – I just doubt that I did, although I can’t say for certain. I just don’t remember it coming up.

We also asked Secretary Mattis how he responded to assertions that communications with or pressure from President Trump or White House officials influenced his actions related to the JEDI Cloud procurement. He told us there was “no influence on my actions,” and:

I didn't feel one ounce of pressure from anyone. I don't recall any direction from the President, or any member from the staff, or from anyone. I'll even broaden it, no Congressman, no member of the Executive Branch, no Senator, I don't recall anyone trying to direct me what to do with the JEDI contract, and that includes the President. I knew he probably wouldn't like it much if Amazon won, but that frankly wasn't my concern as long as we did it right.

Deputy Secretary Shanahan told us he regularly attended Secretary Mattis' small group meetings described in Mr. Snodgrass' book. We read the passage from the book to Deputy Secretary Shanahan during our interview, and asked him if he was ever in a Small Group meeting where Secretary Mattis reported on any communications that he [Secretary Mattis] had with President Trump about JEDI. Deputy Secretary Shanahan answered, "I don't recall any meeting like that." We also asked Deputy Secretary Shanahan what, if anything, he ever heard from Secretary Mattis or anyone else about the reported "screw Amazon" phone call from President Trump to Secretary Mattis as described in the book. Deputy Secretary Shanahan said he did not have knowledge of such a phone call, and said, "I don't recall any mention of a conversation [about JEDI] between Secretary Mattis and the President." Deputy Secretary Shanahan also stated that he was never a party to any phone call between Secretary Mattis and the President that included discussions about JEDI.

Deputy Secretary Shanahan told us that he was aware of news articles that reported on the President's dissatisfaction with *The Washington Post*, Amazon, or Jeff Bezos. He told us that he disregarded the President's public statements about these matters. He also stated he had no communications with the President about JEDI, Amazon, or Mr. Bezos, he was not aware of any involvement in the JEDI Cloud procurement by the President or any member of the White House staff, and he never heard from anyone else, even after he left DoD, that such involvement occurred. He told us there was no pressure or attempt by White House officials to influence the procurement, and that the President and his staff had no effect on the source selection.

Deputy Secretary Shanahan stated, "I don't see how the President could get involved with the contract." Regarding the source selection process, Deputy Secretary Shanahan told us, "We had a very disciplined procurement process." He said:

The integrity and the discipline that Dana [Deasy] and the team put into running a fair and open competition is one of the finest efforts I've ever witnessed.

Mr. Sweeney, Admiral Faller, Mr. Koffsky, and Mr. Hood told us they knew Mr. Snodgrass and regularly attended Secretary Mattis' Small Group meetings in the summer of 2018. Mr. Sweeney told us that he did not remember a Small Group meeting when Secretary Mattis talked about the JEDI procurement, Amazon, *The Washington Post*, or Jeff Bezos.

Mr. Hood told us the only discussion about the JEDI Cloud procurement that he recalled from one of Secretary Mattis' Small Group meetings was about media coverage. He said that Secretary Mattis mentioned a news article about the procurement, and Secretary Mattis wanted to know why "so many people were so upset." Mr. Hood said that he told Secretary Mattis that "every lobbyist in town had been hired by somebody on this [cloud contract] issue, and there was a "significant lobbying campaign going on in Congress." Mr. Hood added that there had been a "tremendous amount

of confusion” in the media, partly due to poor DoD messaging, which “left a lot of room for people to ... speculate.” He told us that this situation fueled some of the confusion about the procurement among some Members of Congress.

Mr. Koffsky told us that he did not recall that Secretary Mattis ever said anything about the JEDI Cloud procurement, Amazon, or Jeff Bezos at a Small Group meeting, but added that Secretary Mattis “may have” asked a question about the JEDI Cloud procurement in the context of media articles or questions from Members of Congress.

Admiral Faller said that he did not recall that Secretary Mattis ever said anything about the JEDI Cloud procurement, Amazon, or Jeff Bezos at a Small Group meeting.

We asked Mr. Sweeney, Admiral Faller, Mr. Koffsky, and Mr. Hood the following questions, and Agency Counsel instructed them not to answer:

Did Secretary Mattis say that President Trump told him to “screw Amazon” by locking them out of JEDI, or words to that effect?

Did Secretary Mattis say “We’re not going to do that. This will be done by the book, both legally and ethically,” or words to that effect? If yes, was it in response to something that President Trump told him [Secretary Mattis]?

Did Secretary Mattis ever talk about, or write about, communication with POTUS or the White House that pertained to the JEDI procurement?

What did Secretary Mattis ever say regarding his communications with the White House on JEDI?

Mr. Snodgrass told us that Admiral Faller sometimes met briefly with Small Group meeting attendees after they left Secretary Mattis’ office. He said that one or more times when there had been a media report about the JEDI Cloud procurement, Admiral Faller mentioned to him that there had been “pressure” from the White House related to the procurement. Mr. Snodgrass told us the group never dwelled on the topic.

Mr. Hood told us that he did not remember any meeting where Admiral Faller mentioned anything about the JEDI Cloud procurement, including any public statement by President Trump. Mr. Koffsky told us that he did not remember a time when Admiral Faller talked about any public statement by President Trump, or statements the media attributed to President Trump, or any media reports regarding the JEDI Cloud procurement. We asked Mr. Koffsky whether Admiral Faller ever talked about pressure from the White House related to the procurement, and Agency Counsel instructed Mr. Koffsky not to answer.

We asked Admiral Faller if he talked to the staff about pressure from or communications with the White House related to the JEDI Cloud procurement, but Agency Counsel instructed him not to answer.

We also asked other witnesses who did not attend the Small Group meetings but who interacted regularly with those who did, whether they heard any talk about the “screw Amazon”

incident that Mr. Snodgrass described in his book. The witnesses told us they did not hear anything about the alleged event. For example, we asked Mr. Deasy, who was aware of the media stories, for his response to reports that the President got personally involved with JEDI, and he said, "It was a big, 'Huh?'" Mr. Deasy said he knew nothing of this, and that he did not hear anything about the President's reported "screw Amazon" call to Secretary Mattis. These witnesses said they were aware, however, of the President's dissatisfaction with Jeff Bezos and Amazon, as reported in the media, which we discuss later in this report.

c. White House Influence - Secretary Esper and Deputy Secretary Norquist

Secretary Esper conducted a review of the JEDI Cloud acquisition program after his July 23, 2019, confirmation as the Secretary of Defense. The Source Selection Team continued its JEDI proposal evaluations while Secretary Esper conducted his review. We also sought to investigate whether the White House influenced the initiation, conduct, or results of Secretary Esper's review.

Secretary Esper Initiates a Review of the JEDI Acquisition Program

Several news media stories published during and immediately after Secretary Esper's July 2019 confirmation as the Secretary of Defense presented public statements the President reportedly made about the JEDI Cloud procurement. These statements repeated the President's previously reported criticisms of Mr. Bezos, Amazon, and *The Washington Post*, and fueled further media speculation that the President was attempting, or had attempted, to influence the JEDI Cloud acquisition toward a specific source selection.

For example, on July 18, 2019, *CNBC* reported that the President had stated, "We're getting tremendous complaints [about perceptions the JEDI Cloud procurement process potentially favored Amazon] from other companies," and "some of the greatest companies in the world are complaining about it." According to the article, President Trump also said he would "take a close look at it [the JEDI Cloud acquisition]." The article described Mr. Bezos as a "constant source of frustration" for the President.

On August 1, 2019, *The Washington Post* reported that "The White House has instructed newly installed Defense Secretary Mark T. Esper to reexamine the awarding" of the JEDI contract "because of concerns that the deal would go to Amazon."¹⁰⁶ It described the move as an "Oval Office intervention" and quoted Secretary Esper as saying that he had heard from Members of Congress and "administration officials" and would take a "hard look" at the JEDI Cloud procurement. The article also reported that "Oracle has lobbied [President] Trump aggressively on the matter, hoping to appeal to his animosity toward Amazon."

An August 4, 2019, *Bloomberg* article titled, "Esper Says He Heard From White House But Wasn't Ordered on JEDI," reported that Secretary Esper "said he heard questions from people in the White House about a Pentagon cloud-computing contract valued at as much as \$10 billion, but wasn't directed to order the review that's under way." Secretary Esper reportedly stated, "I'm looking at all the

¹⁰⁶ At the time this August 1, 2019, article was published, the DoD had not yet made a source selection or awarded a JEDI Cloud contract to Amazon or any other bidding competitor. The DoD made a source selection and announced the contract award in October 2019.

concerns I've heard from Members of Congress, both parties, both sides of the Hill," and "I've heard from people from the White House as well." The article also reported that "several lawmakers had questioned the [JEDI Cloud] contract requirements, including Senators Ron Johnson of Wisconsin and Marco Rubio of Florida," and that Senator Mark Warner of Virginia had tweeted, "the President shouldn't use his power to hurt his media critics," in an apparent reference to Amazon founder and *The Washington Post* owner Jeff Bezos.

We showed *The Washington Post* and *Bloomberg* articles to Secretary Esper and asked him to comment. He told us that Members of Congress complained to him when he met with them prior to his confirmation hearing. He said they complained that JEDI would be a sole source contract, awarded for \$10 billion, without competition, that it would be the only DoD cloud, and that it was tainted by conflicts of interest. Secretary Esper also said that these were the same complaints he'd seen in the news media.

Secretary Esper told us that the "administration officials" he was referring to in *The Washington Post* article were former CIA Director and current Secretary of State Mike Pompeo, and Treasury Secretary Steven Mnuchin. He said that he and Secretary Pompeo discussed the CIA's experiences with contracting for cloud computing services. He also said that Secretary Mnuchin offered to talk with him about his cloud computing experiences in the private sector, but Secretary Esper did not recall actually talking to Secretary Mnuchin about these issues.

We asked Secretary Esper which "White House officials" he was referring to in the news stories, and whether President Trump told him to conduct the JEDI procurement review. Agency Counsel directed Secretary Esper not to answer these questions. We asked, "Did anyone tell you to perform your review?" Secretary Esper replied, "No, I directed it. It was my decision."

Deputy Secretary Norquist told us that he did not believe anyone directed Secretary Esper to perform the review, and that Secretary Esper thought he owed it to the Congress to do it [his review]. Mr. Hood told us that Secretary Esper initiated the review "on his own," in part so he could answer questions from Members of Congress without referring to talking points.

Secretary Esper told us that he had no involvement in the 2017 DoD enterprise cloud adoption initiative or what in 2018 became the JEDI Cloud procurement prior to becoming Secretary of Defense in July 2019. He said that when he became Secretary of Defense, he told Mr. Chewning that he wanted to learn what JEDI was, why cloud services were important to the warfighter, the acquisition timeline, why people were complaining about the program, and whether the DoD conducted the procurement fairly.

In a letter to Secretary Esper, dated August 5, 2019, Senators Mark Warner and Jack Reed asked about the decision to conduct a review. In a response to the Senators, dated October 7, 2019, Secretary Esper wrote that the purpose of his review was to satisfy himself that the DoD was "ensuring the warfighter can leverage the cloud in a timely and effective manner to fight and win on modern battlefields, the integrity of the acquisition process was protected, and the DoD was being a good steward of taxpayer dollars." He informed Senators Warner and Reed that:

The decision to conduct this review was mine alone. I was not directed by anyone else to conduct this review. This decision was driven in large part by the fact that I and/or the Department was contacted multiple times by individuals outside of the DoD expressing concern and/or criticisms about both the Joint Enterprise Defense Infrastructure (JEDI) program and the contract award

process. Multiple Members of Congress mentioned this to me at the time of my nomination.

...

Lastly, my decision to review this project was also driven by the fact that, in my previous role as Secretary of the Army, I did not personally participate in the JEDI Cloud acquisition process. As a result, I have made it a priority to have a complete understanding of the JEDI acquisition activities prior to a contract award decision.

We asked Deputy Secretary Norquist why Secretary Esper initiated the review, and Deputy Secretary Norquist told us that during their confirmation processes, he and Secretary Esper received Questions for the Record from U.S. Senators about the JEDI procurement. In the questions, the Members of Congress expressed concerns and asked Secretary Esper questions about the JEDI Cloud procurement, although none of the questions asked him to conduct a review of the procurement. Deputy Secretary Norquist also said that as the new Secretary of Defense, Secretary Esper needed to be prepared to say, "I have confidence that this was a fair and reasonable process."

We also asked Deputy Secretary Norquist what input he or Secretary Esper received from the White House regarding initiating or framing the review, and Agency Counsel instructed Deputy Secretary Norquist not to answer the question.

Mr. Chewning told us that Secretary Esper initiated his review because Secretary Esper had heard questions and concerns from Members of Congress, and wanted "to educate himself on the cloud, the Department's approach to the cloud, [and to] get a better understanding of the JEDI contract itself." He said he was not aware that anyone told Secretary Esper to conduct the review, and "no one spoke to me [Mr. Chewning] about the review outside of the Department."

We also asked DoD officials who participated in Secretary Esper's review what he told them about why he had initiated it. Mr. Deasy said that Secretary Esper told him, "I committed to Congress in my [July 2019] confirmation hearing that I would do a review of JEDI." Mr. Deasy told us that Secretary Esper did not mention President Trump or White House staff members as a reason for conducting his review.

Mr. Ranks said he thought that Secretary Esper "received a phone call from the White House with questions [about JEDI], but I don't have personal knowledge of that." He told us that Secretary Esper never said that the White House had given any directions or made requests to him [Secretary Esper] or other DoD officials who helped conduct Secretary Esper's review. Mr. Ranks also said that Secretary Esper received multiple inquiries from industry and Members of Congress complaining about various aspects of the JEDI Cloud procurement, which were similar to Oracle's submitted assertions that the gate requirements were too narrow, and the RFP terms favored Amazon in the competition.

The Conduct of Secretary Esper's Review of the JEDI Cloud Acquisition Program

Mr. Chewning told us Secretary Esper's review did not focus only on the future JEDI contract. He said, "I told Dana [Deasy] [to] think of this as like a module; like an education series. If you had to get

the Secretary up to speed on what you've done in cloud, like what's the course you would teach? How would you break it down? And Dana came back with kind of the different modules to educate the Secretary on."

The witnesses who participated in Secretary Esper's review of the JEDI Cloud acquisition program described it as a series of "education sessions" that included informing Secretary Esper about the DoD Cloud Strategy and where the JEDI Cloud procurement fit into the DoD's overall strategy for securing its sensitive data while also making it readily accessible for warfighters. We asked Mr. Deasy, who was in charge of the review, about the content of Secretary Esper's review sessions. He said:

It was a series of education sessions over about six, seven weeks where we took [Secretary Esper] through such things as what is the cloud? What's [sic] the characteristics of the cloud? Why are companies attracted to move into the cloud? How was the cloud going to help the warfighter? How can you assure to me this cloud will be secure and safe? Explain to me how you went about pulling together your requirements to eventually put out an RFP. How did you decide the right way to construct the RFP?

...

He [Secretary Esper] never came close to anything around source selection. It was more generic why do we need to go into a cloud? Why is this so important? And he did ask ... "Why is there so much noise?" Because you remember he had a letter from Oracle in which they are complaining about this so we attempted to go through and educate him as to why there was so much noise on this.¹⁰⁷

We reviewed agendas, memorandums, and briefing charts that DoD personnel used for Secretary Esper's review sessions. These documents showed that the review consisted of five meetings that took place on July 23, August 23, August 29, September 10, and September 16, 2019. Secretary Esper, Deputy Secretary Norquist, Mr. Deasy, and Mr. Ranks attended every review meeting, the CCPM attended two, and the PCO attended one. Mr. Deasy described the initial July 23, 2019, review meeting as a "brainstorming session" that defined the purpose and objectives of the meetings that would follow.

According to a read-ahead which Mr. Ranks prepared for Secretary Esper for the August 23, 2019, meeting, the meeting's objective was to "understand the context and issues that Cloud solves for the 21st century warfighter, leveraging advanced technologies and capabilities." The agenda identified Mr. Deasy and Mr. Ranks as briefers. We reviewed briefing charts and supporting materials for that meeting. The briefing documents focused on "warfighting requirements for cloud computing," and "why DoD needs enterprise cloud." The materials did not contain source selection information and did not mention Amazon or any other JEDI Cloud contract competitors. The briefing materials made no reference to the President, White House staff, or media reports about the President's public criticisms of Mr. Bezos, Amazon, or *The Washington Post*.

¹⁰⁷ Oracle sent a letter to Secretary Esper, dated August 19, 2019, that contained complaints and allegations about favoritism toward Amazon that were similar to those in Oracle's letters to the DoD OIG.

A read-ahead that Mr. Ranks prepared for the August 29, 2019, meeting stated that the session would cover three topics: (1) the DoD Cloud Strategy, (2) cloud in the intelligence community, and (3) “a time-sensitive matter for the [Oracle] litigation appeal made on August 26, 2019.”¹⁰⁸ The read-ahead identified Mr. John Sherman, the Intelligence Community CIO, as another briefer along with Mr. Ranks and Mr. Deasy. A briefing chart for this August 29, 2019, review meeting presented the DoD Cloud Strategy and mentioned that Amazon, Microsoft, and other current DoD contractors already provided cloud services to the Departments of the Army, Navy, and Air Force. While there were no briefing materials for the meeting’s discussion of intelligence community cloud services, we note that Mr. Ranks, whom the agenda identified as a briefer, had been the Program Manager for the CIA’s pathfinder cloud implementation, called C2S. There were no materials in the read-ahead that related to Oracle’s litigation appeal. None of the briefing materials for this meeting referenced the President, White House staff, or media reports about the President’s public statements critical of Mr. Bezos, Amazon, or *The Washington Post*.

Mr. Ranks’ read-ahead for the September 10, 2019, meeting stated that the objective was to “Begin discussion of arguments raised by opponents of JEDI and the DoD cloud strategy, to include the letter Oracle sent to the Secretary of Defense on August 19, 2019,” and “status update regarding on-going litigation and discussion of the urgency declaration DoD would file to challenge an expected injunction request freezing the JEDI program.” The review meeting agenda identified Mr. Deasy, Mr. Ranks, and the CCPM as briefers to Secretary Esper. Regarding the injunction Oracle had requested, the briefing materials stated that the DoD “will need to demonstrate in writing the urgency of awarding the contract,” and the Joint Staff J6 and Mr. Deasy were developing the “draft declaration.”¹⁰⁹ Attachments to the read-ahead included an August 19, 2019, letter that Oracle had sent to Secretary Esper, an analysis of the points Oracle raised in the letter, and a briefing chart that portrayed the current and future states of the DoD Enterprise Cloud. The Enterprise Cloud chart identified contractors that provide current cloud services to the DoD, including Amazon, Microsoft, Oracle, and IBM. The depiction of the future Enterprise Cloud state did not mention any current or potential cloud contractors. The briefing materials for this September 10, 2019, review meeting did not contain source selection information, and did not mention the President, White House staff, or media reports of the President’s criticisms of Mr. Bezos, Amazon, or *The Washington Post*.

Briefing materials for the September 16, 2019, review meeting stated that the objective was to “Describe the development process for the JEDI requirements and Request for Proposals (RFP) to include specific steps taken, who was involved, and the timeline. The session will also review how JEDI intends to address DoD capability gaps in cloud.” The meeting agenda did not identify briefers but stated that Mr. Deasy, Mr. Ranks, and the CCPM were the attendees with Secretary Esper. The PCO told us that she also attended this meeting. An information paper that accompanied Mr. Ranks’ read-ahead document described the requirements and RFP development process the DoD used and provided the current status of the procurement at that time. It stated that Amazon and Microsoft satisfied Phase I gate criteria, but Oracle and IBM did not. It referenced an April 10, 2019, public announcement that Amazon and Microsoft were included in the competitive range, but did not include any details about

¹⁰⁸ When Oracle appealed the U.S. Court of Federal Claims decision upholding the DoD’s gating requirements that had eliminated Oracle as a potential JEDI Cloud competitor and other protested matters, Oracle requested an injunction that would stop the DoD from awarding the JEDI Cloud contract.

¹⁰⁹ The J-6 is the Joint Staff’s Command, Control, Communications, and Computer Systems Directorate and represented warfighter interests in the DoD’s development of cloud computing capabilities.

Phase II of the proposal evaluations or Phase II discussions with Amazon and Microsoft. The materials identified DoD organizations that were involved in the procurement process, but did not name any individuals who were members of the confidential source selection team. The briefing materials for this September 16, 2019, review meeting did not contain source selection information, and did not mention the President, White House staff, or media reports of the President's criticisms of Mr. Bezos, Amazon, or The Washington Post.

Our review of the read-aheads and other materials used to brief Secretary Esper in the sessions described above indicated that they were informational in nature. They did not contain any recommendations, or ask for any decisions or directions from Secretary Esper. None of the materials discussed specific capabilities of the JEDI contract competitors, or provided any confidential DoD source selection information. Deputy Secretary Norquist and Mr. Chewing said that the review did not include information from the contract proposals or the Source Selection Team's evaluation of them. Mr. Deasy, Mr. Ranks, the CCPM, and the PCO all told us that the briefings were for information only, and Secretary Esper made no decisions regarding the JEDI Cloud acquisition program, including the eventual source selection.

Mr. Ranks also told us that the question of which competitor would win the eventual contract award was never a topic of Secretary Esper's review. None of the witnesses said that Secretary Esper expressed to them any concerns about perceptions that the requirements favored Amazon, nor did he ask about the cloud capabilities of Amazon or its competitors. None of the witnesses said that Secretary Esper asked about proposal information, DoD source selection information, any specifics about the source selection evaluation factors, or anything about the team making those decisions. The CCPM said that Secretary Esper's only directions were to (1) brief him on the allegations Oracle had made in their August 19, 2019, letter to him, and (2) prepare for an eventual public source selection announcement.

Oracle's August 19, 2019, letter to Secretary Esper made the same or similar points that Oracle made in its complaints submitted to the DoD OIG, the Government Accountability Office (GAO), and the U.S. Court of Federal Claims. Mr. Deasy told us that Secretary Esper also wanted to know "Why is there so much noise" in the media, which repeated Oracle's allegations of unfair competition favoring Amazon, and conflicts of interest for DoD officials with purported ties to Amazon or its affiliates. The PCO told us that in the September 16, 2019, review meeting, she briefed Secretary Esper about the conflict of interest investigations she had conducted in response to Oracle's complaints, and her testimony to the GAO presenting her findings that there were no conflicts of interest that affected the integrity of the procurement.

Secretary Esper told us that at the conclusion of his review, he "wanted to make sure that Members of Congress who had raised concerns about the JEDI contract had the chance to hear from the DoD team about our views on it, and what we thought the value was for the warfighters." Mr. Hood's office confirmed for us that Secretary Esper invited 28 U.S. Senators and Representatives to a 1-hour meeting on September 26, 2019, to "get the perspectives from members of the House and Senate on the JEDI program." Only four U.S. Representatives and no U.S. Senators attended this meeting at the Pentagon. Secretary Esper said the attendees' concerns were "the same stuff" that "we were seeing in the press [single award, competition, award amount, and conflicts of interest]." Mr. Deasy attended the meeting with the U.S. Representatives. He explained to us that during the meeting, Secretary Esper was in "listening mode," to hear legislative concerns. Mr. Chewing, who also attended, said some of the

attendees “articulated talking points that we knew weren’t true,” such as “it was automatically a sole source contract worth \$10 billion, which when you look at the contract description and solicitation, it clearly was not structured that way.” He said other attendees understood the contract requirements were important to national security.

We asked Secretary Esper and Deputy Secretary Norquist whether they informed anyone at the White House about the review, or the results of the review, and Agency Counsel directed them not to answer. We asked Mr. Chewing if he informed anyone about the review, and Agency Counsel said, “To the extent that the question doesn’t call for you to cite people at the White House, you can answer.” Mr. Chewing then told us that he did not talk to anyone outside the DoD about the review.

Other witnesses who participated in Secretary Esper’s review told us they had no knowledge whether information about the review went to the White House. Mr. Deasy told us that the White House staff did not ask for, and he did not share with any White House official, any information about the review. He said the White House staff had no influence over the review.

Secretary Esper’s Recusal and Deputy Secretary Norquist’s Decision to Move Forward

The CCPM told us that after the review sessions finished, “the conversation was now going to segue into a conversation about next steps,” and Secretary Esper recused himself from the JEDI Cloud procurement. Mr. Deasy told us that after the September 26, 2019, meeting with the four U.S. Representatives, Secretary Esper said:

Okay. I understand now our strategy. I understand the importance. I understand the process you’ve run. I’ve heard from Congress. I am now going to recuse myself and turn it over to the Deputy [Mr. Norquist] to decide the way forward.

In a memorandum to Deputy Secretary Norquist dated October 7, 2019, Secretary Esper recused himself from participating in decision briefings and making determinations about the JEDI Cloud program. In the memorandum, Secretary Esper wrote:

Upon my assuming the position of Secretary, I committed to conduct a comprehensive review of the Joint Enterprise Defense Infrastructure (JEDI) Cloud acquisition program to ensure that the Department’s cloud based computing and artificial intelligence needs are met and that the acquisition process is fair and impartial. As part of that process and to ensure a full understanding of the program, I requested and reviewed information concerning the JEDI Cloud acquisition program to date. I also requested that the Chief Information Officer of the DoD identify options for how the Department could proceed with its cloud computing requirements. Out of an abundance of caution and to avoid any concerns regarding my impartiality, I am recusing myself from participating in any decision briefings or otherwise making a determination concerning the JEDI Cloud acquisition and am delegating to you [Deputy Secretary Norquist] responsibility for making any such decisions or determinations.

The memorandum did not clarify what Secretary Esper meant by “concerns regarding my impartiality.” We asked Mr. Scott Thompson, Director, Standards of Conduct Office, DoD Office of

General Counsel, who is responsible for advising OSD's senior leaders on ethics matters, to explain the context of Secretary Esper's recusal. Mr. Thompson wrote to us:

Although the law did not require the SD [Secretary of Defense] to recuse himself from such matters, he did so on his own initiative because his adult son is employed by IBM, a company that was at one time part of the competition but had backed out by the time SD Esper came to office.¹¹⁰

Secretary Esper told us what he meant by "concerns regarding my impartiality":

It was very apparent to me that people who wanted to slow down the contract, or wanted to stop it, or take it to court, were looking for any reason to do something like that, and so it became apparent to me that if they were going to go to that extent, that the fact that my son was employed at IBM, despite what he really does for IBM, no association with JEDI whatsoever, that somebody might try and say I was acting in a way that would favor him. And so I decided at that point it's not worth it. I had good confidence in Dana Deasy and the team had done all the right things, and I wasn't going to give somebody else another reason to claim that I was somehow getting, involving myself in the contract, or acting unethically, whatever the case may be. So I decided to recuse myself.

Secretary Esper said that he did not recuse himself when he began the review because he only learned during it that IBM had been an early competitor. He told us he then thought, "My son works at IBM. This is not a good optic." He said he did not remember the date of the review session when he first learned of IBM's prior involvement, but thought it was in September 2019.

Mr. Chewning also told us that Secretary Esper learned during the review that IBM had been a competitor. The September 16, 2019, review session read-ahead materials included the fact that IBM and Oracle were eliminated because they did not meet the gate criteria established in the RFP.

Mr. Chewning told us that Mr. Deasy structured Secretary Esper's review to support a post-review decision, not on "who would get the contract," but on "the path forward on the JEDI [Cloud] procurement." Deputy Secretary Norquist said that "up until then [October 7, 2019], there was not a decision to be made." He said that Secretary Esper told him, "David, you sat in the meetings. You can do this. You take a look and do the right thing. I will just step back to avoid the appearance [of a conflict of interest]."

Deputy Secretary Norquist also told us that on October 7, 2019, the day Secretary Esper recused himself, Mr. Deasy briefed Deputy Secretary Norquist on available options for proceeding with the procurement. He explained that Secretary Esper's review included discussion of the single award strategy, the \$10 billion ceiling amount, and other details that might change if the DoD started over with the procurement. A slide presentation, "Options Brief," described 10 potential options. A second presentation narrowed the choices to seven options. Mr. Deasy told us that he used the second presentation, which he called the "Summary Briefing," to brief Deputy Secretary Norquist about options. One of the seven options was the status quo, which meant to continue evaluating proposals from

¹¹⁰ (FOUO SSI) IBM had not "backed out" as Mr. Thompson described. As we detailed above, [REDACTED]

competing contractors submitted in response to the RFP, and award one contract. The other options consisted of various changes to the status quo in the areas of contract ceiling amount, contract length, and pricing terms. Deputy Secretary Norquist told us that he selected the status quo option at this October 7, 2019, meeting. According to Deputy Secretary Norquist and Mr. Deasy, Secretary Esper did not participate in this meeting.

A “Memorandum for Record: Options Decision,” dated October 18, 2019, noted that Secretary Esper had “received a series of five informational briefings from the DoD CIO and Joint Staff.” It then stated:

On October 7, 2019, the Secretary recused himself and delegated his authority to the Deputy Secretary to consider options on how to proceed with the JEDI acquisition. On the same day, the Deputy Secretary held a meeting with the DoD CIO, USD(A&S), and DoD OGC to discuss the options. At no point during any of the review or options discussion was source selection sensitive material discussed.

...

At the October 7, 2019, meeting, the Deputy Secretary of Defense approved the DoD CIO to finalize the JEDI source selection and award in accordance with the current Request for Proposals.

Deputy Secretary Norquist signed the options decision memorandum for record on October 18, 2019. He told us that the review team’s “universal recommendation” was not to change the contract. He stated that he chose the status quo option, proceeding with the procurement as planned, and that his thought behind this was, “I am now comfortable. We had a requirement. We had the right contracting process. It was a fair and reasonable process.” He also noted that the GAO and the U.S. Court of Federal Claims had reviewed but not found cause for stopping the procurement, and the DoD OIG Principal Deputy IG had told him that the DoD OIG investigation had not found information that should prevent the DoD from proceeding with awarding a contract.¹¹¹ Deputy Secretary Norquist then told us:

We did the analysis and changed nothing. The decision was to complete the process the way you had originally done it. I didn’t make any changes, and again I owed it to the Hill to do the due diligence but at the end of the day the decision was we did the due diligence. They had done it right; award it.

¹¹¹ On August 13, 2019, the DoD OIG had issued a public statement acknowledging that it was conducting a review of the JEDI Cloud procurement and an investigation of allegations against former DoD officials. On October 16, 2019, Deputy Secretary Norquist asked the DoD OIG whether the information in its investigation, to date, should prevent the DoD from moving ahead with a contract award. The DoD OIG concluded that its investigation should not prevent the award of the contract. At that time, the DoD OIG did not know, and did not ask, who the contract would be awarded to. On October 17, 2019, the DoD OIG provided Deputy Secretary Norquist a statement to use to explain the DoD OIG’s response to his questions. The DoD OIG’s statement read “The DoD OIG’s multidisciplinary team of auditors, investigators, and attorneys are close to completing the review of the JEDI Cloud acquisition. The DoD has consulted the DoD OIG, and we have shared our views on the JEDI acquisition and provided information on the status of the review. To date, we have not found evidence that we believe would prevent the DoD from making a decision about the award of the contract.”

We asked Deputy Secretary Norquist if, to his knowledge, anyone communicated to the White House his October 7, 2019, decision to proceed with a contract award, or if anyone at the White House told him who should win the contract. Agency Counsel instructed him not to answer these questions.

Mr. Ranks told us that after Deputy Secretary Norquist's October 7, 2019, decision to proceed with a contract award, he [Mr. Ranks] told Deputy Secretary Norquist, "We have made our [source selection] decision." He said he did not tell Deputy Secretary Norquist which contractor the Source Selection Authority selected. According to Mr. Ranks, Deputy Secretary Norquist then relayed two points to the White House "immediately" prior to the DoD's October 25, 2019, public announcement of the contract award. The first point Deputy Secretary Norquist relayed to White House officials was that the "JEDI activity makes sense and is in the best interest of the Department." The second point was that "We have decided who the vendor is" and "we're about to award," but did not reveal the name of the vendor. Mr. Ranks said, "This [information for the White House] wasn't about who it [the contract] should go to," as that decision had already been made prior to contacting the White House.

Secretary Esper told us that Deputy Secretary Norquist "briefed folks in the White House after the [award] decision" but before the public announcement. Deputy Secretary Norquist confirmed to us that he informed White House officials on October 25, 2019, that the DoD was about to award the contract on that same day, but he did not inform the White House who had won the contract because he did not yet know that information when he contacted the White House. Based on Agency Counsel presidential communications privilege objections to all similar questions asked of other witnesses, we did not ask Deputy Secretary Norquist who he talked to at the White House or whether anyone at the White House attempted to influence the award announcement.

d. White House Influence and Other DoD Officials

Although the Secretary and Deputy Secretary normally would have the most direct contact with the President and his staff representing the DoD, we also asked other DoD Officials about any JEDI-related contacts they may have had with the President or any member of his staff. All of the witnesses, except Mr. Deasy, said they had no contact with the President. Mr. Deasy told us that on February 11, 2019, he attended a White House ceremony where the President signed an executive order on artificial intelligence. Mr. Deasy said that he shook hands with the President at this signing ceremony and identified himself as the DoD CIO. Mr. Deasy said that the President asked if he (Mr. Deasy) was aware of all of this "[JEDI] cloud noise." Mr. Deasy responded to the President, "Yes, I am." Mr. Deasy told us "that was the entire conversation" he had with the President. He said he had no other communications with the President on that day or since, and he had no knowledge of any involvement by the President with the JEDI Cloud procurement.

~~(FOUO)~~ Inquiry from the [REDACTED]

~~(FOUO)~~ The CCPM told us that before becoming the CCPM, she served as the DDS General Counsel (GC). The CCPM said that on August 14, 2018, while she was serving as the DDS GC,

[REDACTED]

(FOUO) [REDACTED]

(FOUO) [REDACTED]

(FOUO) [REDACTED]

(FOUO) [REDACTED]

(FOUO) Mr. Sweeney told us that he knew Mr. Lynch but did not remember the CCPM. We asked him whether Mr. Lynch and the CCPM talked to him about the phone call from [REDACTED] but Agency Counsel instructed Mr. Sweeney not to answer any of our questions related to communications with [REDACTED]

JEDI Cloud Briefings for the White House Chief of Staff and Deputy National Security Advisor

Mr. Deasy and Mr. Ranks described to us four separate contacts they had with White House staff members regarding the JEDI Cloud procurement.

Mr. Deasy stated that he first learned of White House staff interest in the JEDI Cloud procurement sometime in June 2019, when Mr. Eric Chewning, Chief of Staff to the Secretary of Defense, verbally asked him to brief White House Acting Chief of Staff Mick Mulvaney and Deputy National Security Advisor Charles Kupperman on the JEDI Cloud procurement.

We asked Mr. Chewning about the origin of the request for the briefings for Mr. Mulvaney and Mr. Kupperman that Mr. Deasy and Mr. Ranks described, and how they were conducted. Agency

Counsel instructed Mr. Chewning not to answer our questions about the meetings with Mr. Mulvaney and Mr. Kupperman.

According to Mr. Deasy and Mr. Ranks, the briefings for Mr. Mulvaney and Mr. Kupperman occurred separately. On July 10, 2019, Mr. Deasy, Mr. Ranks, and Mr. Chewning visited the White House, where Mr. Deasy and Mr. Ranks briefed Mr. Mulvaney and Deputy Chief of Staff Rob Blair on “Cloud 101” and digital modernization. Mr. Ranks said he viewed the briefing as a chance to dispel myths and provide “a factual grounding of the [JEDI Cloud] program.” Mr. Deasy told us that Mr. Mulvaney and Mr. Blair did not:

inquire about if we had an idea, quote unquote who the potential awardee was going to be and they never went down that discussion lane whatsoever. They stuck strictly with what is the strategy about. What is this thing called JEDI? Why is it important for the warfighter? How are you going to secure it? What’s all the noise in the press about? Those were the nature of the questions.

We asked Mr. Deasy what questions, if any, Mr. Mulvaney and Mr. Blair asked about the contractors who were competing for the JEDI contract, and he told us:

They only knew what had been reported publicly that we had down-selected to two, and they knew through the public media that we had down-selected to Amazon and Microsoft, but at no time when I met with them did they ever ask me about strengths or weaknesses, pros or cons, or ask me to state an opinion on one vendor over the other vendor.

Among the examples of press “noise” discussed in this White House meeting that Mr. Deasy and Mr. Ranks attempted to clarify were inaccurate reports that JEDI was a sole source contract for \$10 billion, the assertion that a single award approach did not provide for a best value solution, and complaints from eliminated competitors that the gate criteria in the RFP guaranteed that one particular contractor, Amazon, would win. Mr. Deasy and Mr. Ranks stated that Mr. Mulvaney and Mr. Blair did not task them with any action items, no one at the briefing tried to influence DoD’s future source selection decision, and no one asked questions such as who would win the contract, who was on the source selection team, or the mechanics of the source selection process. Neither Mr. Deasy nor Mr. Ranks said that Mr. Mulvaney or Mr. Blair made any comments in the meeting about Amazon or Mr. Bezos.

On July 18, 2019, Mr. Deasy and Mr. Ranks visited the White House again, this time to brief Deputy National Security Advisor Charles Kupperman. Mr. Ranks said that an industry association or similar group had sent a letter to then-National Security Advisor John Bolton, and Mr. Ranks thought that may have been the impetus for the request to return to the White House and brief Mr. Kupperman. Mr. Deasy told us they briefed Mr. Kupperman on the “same identical thing” as they had briefed to Mr. Mulvaney, which included content on “the realities of what JEDI is really about.” Mr. Deasy said that Mr. Kupperman also asked them about “noise in the media about this JEDI,” but that Mr. Kupperman’s focus in the meeting was on data security in a cloud environment. Mr. Ranks told us that they did not get through the entire procurement briefing they had prepared, in part because Mr. Kupperman did not seem to have any prior knowledge about or significant interest in the procurement beyond data security. Mr. Ranks said no one at the White House tasked them with any

action items as a result of this briefing. Neither Mr. Deasy nor Mr. Ranks said that Mr. Kupperman made any comments in the meeting about Amazon or Mr. Bezos.

DOD Outreach to an Assistant to the President

Mr. Deasy stated that on July 1, 2019, he invited Mr. Chris Liddell, Assistant to the President and Deputy Chief of Staff for Policy Coordination; and Dr. Kelvin Droegemeier, Director, Office of Science and Technology Policy, to visit DoD's Joint Artificial Intelligence Center (JAIC) and learn about its capabilities.

On July 29, 2019, Mr. Ranks and Mr. Deasy called Mr. Liddell to follow-up on Mr. Deasy's invitation. According to Mr. Ranks, he could tell "from the President's public statements" about the JEDI Cloud procurement that the President "had only one side of the story," and the side he had "didn't have its facts correct." Mr. Ranks said their purpose in contacting Mr. Liddell was to "make sure that White House personnel understand how the DoD views the cloud strategy and this [JEDI] acquisition's role within the strategy," so that the White House did not make any decisions based on information "provided by lobbyists." They asked Mr. Liddell, "who would the President turn to on this topic?" According to Mr. Ranks, Mr. Liddell said that President Trump, "to his knowledge was not engaging his advisors on this topic."

Mr. Deasy told us that on August 21, 2019, he hosted Mr. Liddell; Dr. Droegemeier; Ms. Jacqueline Moorhead, Special Assistant to the President and Director of the Office of Policy Coordination; and Dr. Erik Noble, Senior Policy Advisor, Office of Science and Technology Policy at the DoD JAIC. Among the 12 agenda items for the JAIC visit were digital modernization, the stand-up and progress of the JAIC, and an "enterprise cloud discussion." Mr. Deasy said the meeting was not about the JEDI Cloud procurement. He and Mr. Ranks told us that the general enterprise cloud discussion was needed so White House officials would understand that the DoD needed an enterprise-level cloud to leverage AI technology and realize DoD's digital modernization objectives.

Mr. Deasy said that he coordinated regularly with Mr. Roger L. Stone, the White House CIO, because the DoD provides information technology services for the White House's communications systems.¹¹² Mr. Deasy told us that during one conversation, Mr. Stone said he was interested in the possibility of using the JEDI Cloud contract, once awarded, as a vehicle to acquire cloud services that could increase the White House's secured communications capabilities. Mr. Deasy added that this conversation with Mr. Stone was not about any cloud service providers by name or "sourcing" communications improvements to any particular potential contractor.

Mr. Ranks said that he had no other White House contacts or engagements other than those described above. He stated that in his contacts with White House staff, no one ever indicated to him that the President had raised the topic of JEDI with them, and none tried to pressure him regarding the eventual JEDI Cloud contract award.

Agency Counsel instructed Secretary Esper, Deputy Secretary Norquist, Mr. Chewning, Mr. Sweeney, Mr. Hood, Mr. Koffsky, and Admiral Faller not to answer the following questions:

¹¹² Mr. Roger L. Stone is the White House Chief Information Officer. He is not the Roger J. Stone who is a political consultant that was recently indicted and convicted in connection with the investigation begun by Special Counsel Robert Mueller.

What communications did you have with President Trump or anybody at the White House about the JEDI procurement?

Did President Trump or any White House official ever suggest, imply, or directly state to you verbally or in writing as to who the contract should be awarded or not awarded to?

Did President Trump or any White House official provide any direction on what the results of Secretary Esper's review should be?

Did other DoD officials have any communications with the President or anybody at the White House about JEDI?

Did anybody at the White House ever tell you who the contract should go to or not go to?

Did anyone at the White House ever tell you that the contract should or should not go to any particular company?

What actions or decisions related to the JEDI acquisition or procurement did you ever make based on communications with anyone at the White House?

What impact or influence has anyone at the White House had on the JEDI Cloud source selection?

In addition, we asked Secretary Esper if he described or relayed any comments from the President or White House staff about JEDI, Amazon, or Mr. Bezos to anyone in the DoD. Agency Counsel instructed him not to answer. Secretary Esper told us, without Agency Counsel objection, that he did not recall anyone bringing concerns to him about any White House involvement in, or influence over, the JEDI Cloud procurement.

The Source Selection Authority (SSA) told us the SSA had no communications with the President, his staff, or other White House officials communicated. We also asked if Secretary Mattis, Secretary Esper, Deputy Secretary Shanahan, Deputy Secretary Norquist, or Under Secretary Lord communicated with the SSA, and the SSA responded, "No." All other witnesses, including the evaluation factor chairpersons who scored the competing contractors, told us they felt no pressure or influence from any White House officials, and they had observed nothing to indicate that any contacts from the White House, if they occurred, reached any members of the source selection team through DoD officials senior to them.

e. White House and Media Influence on the JEDI Cloud Source Selection

In this subsection we present what witnesses involved in the JEDI Cloud source selection told us about (1) what they knew of the President's public statements about the JEDI Cloud procurement, Mr. Bezos, Amazon, or *The Washington Post*; (2) direct or indirect pressure or influence the White House may have exerted on them related to their roles in the JEDI Cloud contract source selection; (3) indicators they may have observed that the White House pressured or influenced other JEDI Cloud stakeholders, including DoD senior executives, the CCPO, the DDS, the contracting officer, or

members of the source selection team; and (4) the impact that any of these things may have had on their individual and collective JEDI Cloud evaluations and recommendations for the outcome of the JEDI Cloud source selection.

Media Reports of the President's Public Statements About the JEDI Cloud Procurement

Various DoD officials told us that they were aware of media reports of the President's public statements about JEDI Cloud, Mr. Bezos, Amazon, and *The Washington Post*. For example, Mr. Deasy, who oversaw the CCPO, told us that other than the President's February 11, 2019, question to him about "cloud noise," Mr. Deasy's "only sources for any comments that have been made by the President ever related to JEDI have been those that have come from the media." The DDS Director, Mr. Lynch, said he was aware of various media reports, including that Oracle CEO Safra Catz had a close relationship with and lobbied the President about the JEDI Cloud procurement.¹¹³

The PCO told us she was aware of media reports about the JEDI Cloud procurement, which she called media "swirl." She said the same points that Oracle made in its protests to the GAO and the U.S. Court of Federal Claims kept appearing in the media. To the extent there were interruptions or distractions in the procurement process, the PCO blamed lobbying by competing contractors:

Every time a new Secretary came in we had to take a pause, let them review JEDI It wasn't mainly [the President]. It was mainly what I believed was lobbying, you know, constituents [cloud service contractors] lobbying their Congress people. Congress people sending letters to the President, letters to the new sitting Secretary asking for them to do a deep dive on JEDI activities, and I think that that was more disruptive than the tweets, or the stuff the President was doing ... [which] wasn't really making an impact.

Influence Over DoD Officials' Actions Related to the JEDI Cloud Source Selection

Secretary Esper, Deputy Secretary Norquist, and Mr. Chewing told us they did not tell the PCO or anyone else involved in the procurement who should win the contract, and did not know the identity of anyone on the Source Selection Team.

Secretary Esper told us that he did not base any decisions on President Trump's public statements or statements the media attributed to President Trump. He said these statements had no impact on the JEDI procurement.

Deputy Secretary Norquist told us that President Trump's public statements and media reports that attributed statements to President Trump did not impact the JEDI Cloud source selection. He said:

We've had the GAO look at it [JEDI] twice. We had the [DoD] IG's office look at it. We had the Court of Federal Claims look at it. They decided that the requirements were fair and reasonable. They decided that the process was fair and reasonable. This one [JEDI] had a number of people go into it and do that type of analysis. I have confidence in the people who do that. I have confidence

¹¹³ At the time of the media report about Ms. Catz complaining to the President about the JEDI Cloud procurement, she was Co-CEO of Oracle. She is now the CEO. Throughout this report we refer to her as Oracle's CEO.

in the GAO and the [DoD] IG when they do these types of reviews. I have confidence in the acquisition community following the procedures.

Mr. Chewning told us media reports had no impact on his actions, and he was not aware that they impacted Secretary Esper's, Deputy Secretary Norquist's, or Mr. Deasy's actions. He said that he saw no evidence that President Trump influenced the JEDI Cloud procurement. He also said that he did not know the identity of anyone on the source selection team that awarded the contract to Microsoft. Mr. Chewning said that no one raised concerns to him about White House influence or even the appearance of influence. He said he did not believe that President Trump's public comments or media reports that alleged White House interference in the JEDI Cloud procurement had any impact on the source selection process. He explained that the "DoD procurement process is designed to weed out outside influence, and I know that the leaders here highly value ethical, appropriate conduct of these contracts."

Mr. Deasy said the President's public comments reported in the media "did not in any way" influence his actions as they related to the procurement, and he "never once felt pressured from the White House, the staff, the President, the Secretary, the Deputy Secretary, even Congress for that matter." Mr. Deasy also told us he was not aware of any pressure or undue influence on anyone involved in the procurement, and he was frustrated with media reports that alleged or insinuated such influence.

We also asked witnesses who were directly involved in the source selection process whether the media reports, any pressure from the White House, or any pressure from DoD officials above them influenced their actions as they made source-selection evaluations and decisions. None of the witnesses said that they felt any pressure from their DoD superiors, or anyone associated with the White House. All of the witnesses stated that media reports about the President's public statements had no influence on their actions and no bearing on the outcome of the source selection that awarded the contract to Microsoft.

In the following sections, we provide a sample of responses from key source-selection witnesses regarding any influence on them from the White House or from DoD officials on the JEDI Cloud source selection team more senior to them.

Mr. Ranks, who oversaw the CCPO, stated that the President's reported public statements, and his own engagements with White House personnel "did not influence my actions related to the procurement in any way." Mr. Ranks said that he received no pressure from anyone at the White House and had no information that indicated any White House person, or any public statements from the White House, had any influence on the source selection team's conduct, on the PCO, the CCPO, the DDS, or any senior DoD executives. He said that the White House's impact on the JEDI Cloud procurement was, "ultimately nothing." He qualified the word "ultimately" by explaining to us that he believed the White House contributed to Secretary Esper's July 2019 decision to conduct a review of the procurement, and Mr. Ranks devoted time to making sure he gave accurate information to Secretary Esper and the White House personnel that he and Mr. Deasy briefed in July and August 2019, as described above.

(FOUO SSI) [REDACTED] the SSAC Chair, said she had no communications with the President or anyone from the White House about the JEDI Cloud

procurement. She was not aware of any influence that the President's reported public statements had on the source selection team or other DoD officials. She said the media reports she read or heard did not influence her actions, and that she was "unimpeded by outside influences."

According to the SSA who made the source-selection decision, there was no White House pressure, and the President's reported public statements about JEDI, Amazon, and Mr. Bezos did not influence the SSA's actions or the actions of anyone involved in the JEDI Cloud source-selection. The SSA told us that she had not heard or observed any indication that, "the deliberations of what the [JEDI Cloud] technical evaluation boards did, or the price evaluation board, and then the SSAC," were "influenced by anything they saw in the news."

The CCPM, who was the DDS General Counsel until she became the CCPM in October 2018, stated, "I was personally involved in every aspect of the source selection," and it was "not true" that the President became personally involved in JEDI, as reported in the media. Public statements attributed to the President "had no impact whatsoever" and "there was just no influence" on her actions. According to the CCPM, to assert that the President influenced the procurement in a way that disadvantaged Amazon was "completely ridiculous" and "almost insulting." The CCPM added that no one "from the [Pentagon's] E Ring" even knew the identity of any members of the source selection team, and "the source selection process and execution of the program; that was not something that they [the President, the White House, the Congress, or political appointees in the DoD] meddled in."

Regarding the impact of media reports and the President's reported public statements about Amazon and Mr. Bezos, Mr. Lynch stated, "I literally could not give a s--t" because the White House had "zero" influence on his actions or the source selection team's deliberations.

With respect to the source selection plan, the PCO said, "it [media swirl] didn't trickle down to our level of execution." The PCO observed no indication that the President or anyone from the White House exerted any pressure on anyone or became involved in "any aspect" of the procurement and source selection. She said that "no outside influence" affected her approach to her work, and the White House "did not impact the source selection." Regarding senior DoD officials influencing the requirements or source selection because of White House influence on them, the PCO said, "They did not come in and make any changes to what we were doing."

We also interviewed the chairpersons of all nine proposal evaluation factor teams. None of them testified there was any outside influence on their teams' work or that the President's reported public comments influenced them or their teams in any way. One of the chairpersons said the notion that the President influenced the source selection was "laughable," and further remarked to us:

I am confident that if anyone in that [source selection] process felt unduly pressured that they would have alerted not just the contracting officer but the Inspector General themselves, and we were told several times throughout the acquisition – one of the first things that [the DDS counsel] said to us in training when we had then-Secretary Mattis was that Secretary Mattis expected us, and that [the DDS counsel] expected us, not to be merely ethical staff and comply with our ethical obligations, but to be ethical sentinels, and that we should not only hold ourselves to the highest standards of this Department but that we should hold each other to them and that it was our moral responsibility to report any kind of – anything that could even provide a hint of malfeasance.

f. OIG Conclusions on White House Influence Over the JEDI Cloud Procurement

We sought to review whether there was any White House influence on the JEDI cloud procurement. We could not review this matter fully because of the assertion of a “presidential communications privilege,” which resulted in several DoD witnesses being instructed by DoD OGC not to answer our questions about potential communications between White House and DoD officials about JEDI. Therefore, we could not definitively determine the full extent or nature of interactions that administration officials had, or may have had, with senior DoD officials regarding the JEDI Cloud procurement. As a result, we could not be certain whether there were any White House communications with some DoD officials which may have affected the JEDI procurement.

However, we believe the evidence we received showed that the DoD personnel who evaluated proposals and made the source-selection awarding Microsoft the JEDI Cloud contract were not pressured about their decision on the award of the contract by any DoD leaders more senior to them, who may have communicated with the White House. We interviewed the DoD personnel involved in the factor evaluation and source selection processes, including factor and selection board chairs, the SSA, and the PCO. Most of their identities and involvement in the procurement award were unknown to White House staff and even to the senior DoD officials. None of them told us they felt any outside influence or pressure as they made their decisions on the award of the contract.

This section provides more detail on these conclusions. We first analyze the appearance of White House influence on the JEDI Cloud procurement, focusing on the impact media reports of the President’s public statements had on appearance of influence, “lobbying” efforts by JEDI Cloud competitors who complained the process was designed to favor Amazon, and the media reports that linked the President’s statement that he would look into complaints about the procurement process with his prior public statements criticizing Mr. Bezos, Amazon, and *The Washington Post*. We then present our conclusions more fully regarding alleged White House influence on key procurement events, and we finish with our summary conclusion on White House influence.

Alleged White House Influence

We found that in 2018, when the media began reporting cloud competitor complaints about the JEDI procurement, media reports also began tying these complaints to the President’s publicly expressed dissatisfaction with Jeff Bezos, Amazon, and *The Washington Post*. The media reports suggested that President Trump would take some action against Amazon as retribution for perceived biased coverage of his administration by *The Washington Post*, which is owned by Mr. Bezos. Every witness we interviewed said they had some level of awareness of media reporting on these matters.

For example, a March 2018 advertisement in the *New York Post* sought to advise President Trump that the DoD was going to award a \$10 billion contract to Amazon without competition. Other media reports about the JEDI Cloud procurement continued into 2019, and President Trump announced publicly in August 2019 that he was hearing complaints from industry about the JEDI Cloud procurement and that he would look into the complaints. There were additional media reports, described in this report, that Oracle’s CEO met with the President multiple times and expressed concerns that the JEDI Cloud procurement was unfairly geared toward Amazon.

The DoD witnesses we interviewed were aware of media reports about the JEDI award, but they said they considered it “lobbying,” and “media swirl.” The witnesses also said they were aware of the President’s reported past statements that criticized Mr. Bezos and his businesses. None of the witnesses said that these reported comments had any effect on their JEDI Cloud procurement work, and we found no evidence that they did.

However, we also determined that these media reports, and reports of President Trump’s statements about Amazon, ongoing bid protests and “lobbying” by JEDI Cloud competitors, as well as inaccurate media reports about the JEDI Cloud procurement process, may have created the appearance or perception that the contract award process was not fair or unbiased.

For example, media reporting from August 2019 stated that President Trump directed Secretary Esper to review the JEDI Cloud procurement, and speculated that he tried to influence Secretary Esper or other DoD officials not to select Amazon. Subsequently, the DoD’s October 25, 2019, announcement of the JEDI Cloud source-selection in favor of Microsoft, followed the next day by a *CNN* report that the President allegedly directed Secretary Mattis in 2018 to “screw Amazon” out of bidding on a JEDI Cloud contract, as alleged in Mr. Snodgrass’ book, further contributed to media speculation that President Trump may have attempted to influence the procurement against Amazon.

Despite these reports, we found no evidence that any DoD official based any action or decision related to the JEDI Cloud procurement on (1) President Trump’s public statements; (2) statements the media attributed to President Trump; (3) any communication with White House officials; or (4) any communication with the President. No witness testified that any of these four things had any influence on their behavior, although as explained above, seven witnesses did not answer our questions regarding White House communications because the DoD OGC told them not to respond. We also found no evidence that any DoD official responded to alleged White House influence or attempted to influence the PCO or SSA. Most importantly, no member of the JEDI Cloud Source Selection Team said they were influenced in any way to arrive at a particular outcome.

In the following sections, we analyze these findings as applied to the following specific key events.

- (1) Secretary Mattis’ alleged 2018 “screw Amazon” phone call from President Trump.
- (2) Secretary Esper’s review of the JEDI Cloud acquisition.
- (3) Secretary Esper’s October 2019 recusal from decision making related to the JEDI Cloud acquisition.
- (4) Deputy Secretary Norquist’s October 2019 decision to proceed with the JEDI Cloud procurement.
- (5) Communications that DoD officials had with White House officials.

2018 “Screw Amazon” Phone Call to Secretary Mattis

We could not corroborate or disprove Mr. Snodgrass' book account that President Trump called Secretary Mattis in 2018 and told him to "screw Amazon" out of a chance to bid on the future JEDI Cloud contract. Secretary Mattis told us he could "not confirm" Mr. Snodgrass' statement and said he did not recall talking to President Trump about JEDI. Deputy Secretary Shanahan said he "did not recall any meeting like" the one that Mr. Snodgrass described, and also said, "I don't recall any mention of a conversation [about JEDI] between Secretary Mattis and the President."

However, we were unable to fully corroborate or contradict Mr. Snodgrass' account of the Small Group meeting because when we interviewed the other officials that Mr. Snodgrass told us attended the Small Group meeting, Agency Counsel instructed them not to answer our questions about communications with the President.

Despite the assertion of a presidential communications privilege, we determined that the phone call, if it did happen as described, did not influence Secretary Mattis' actions as they related to the JEDI Cloud procurement. Mr. Snodgrass himself wrote in his book and confirmed to us through his attorney that Secretary Mattis told the attendees in the Small Group meeting that the DoD would not do what the President had allegedly directed, and would execute the procurement in an ethical manner. In addition, no witness provided evidence that Secretary Mattis or any other DoD official acted in a way that disadvantaged Amazon or advantaged another contractor.

Secretary Esper's Review of the Procurement

We did not find evidence that President Trump told Secretary Esper to conduct his review of the JEDI procurement. Secretary Esper told us that no one told him to conduct the review and that it was his decision alone. He made the same statement in a letter to Senators Warner and Reed.

Secretary Esper told us the "administration officials" he mentioned in the August 1, 2019, *The Washington Post* article were Secretary of State Pompeo and Treasury Secretary Mnuchin. He said he did not remember actually talking to Secretary Mnuchin, and he said his talk with Secretary Pompeo was about his cloud computing experience when he was the Director of the Central Intelligence Agency.

However, we could not review this matter fully or determine which White House officials Secretary Esper referred to in the statement that appeared in the August 4, 2019, *Bloomberg* article, which reported that Secretary Esper said, "I've heard from people in the White House." Nor could we inquire about the content of any related conversations he may have had with any White House officials. Agency Counsel instructed Secretary Esper not to answer questions about his own public statements that he had heard from White House officials about the JEDI Cloud procurement.

In our investigation and review, we did not uncover any evidence that the White House influenced the actual conduct or content of Secretary Esper's JEDI Cloud procurement review meetings. The briefing materials we reviewed were consistent with what other witnesses told us about the scope and content of the review. They did not reference any White House communications or direction, and did not indicate any bias for or against Amazon, Microsoft, or any other contract bidders. Witnesses who participated in the review said they had no information that the White House was involved in any part of the review.

In addition, as noted above, Mr. Deasy reached out to Assistant to the President and Deputy Chief of Staff for Policy Coordination, Mr. Liddell, about JEDI, and Mr. Liddell said that President Trump was “not engaging his advisors” on JEDI. Mr. Liddell visited the Joint Artificial Intelligence Center on August 21, 2019, but the “enterprise cloud discussion” that was part of the JAIC visit was in the context of artificial intelligence and digital modernization, not the JEDI Cloud procurement.

The witnesses who briefed Secretary Esper in his review meetings also told us that he did not discuss contract competitors or their capabilities, and that he never said anything to them that indicated a bias or preference for the procurement’s eventual outcome. They told us that the review was to inform Secretary Esper on the procurement so that he could understand and talk about it with a depth of knowledge.

Secretary Esper’s Recusal Decision

We found no evidence that the White House influenced Secretary Esper’s decision to recuse himself on October 7, 2019, from “participating in any decision briefings or otherwise making a determination concerning the JEDI Cloud acquisition.” Secretary Esper told us he recused himself after he learned that the DoD had previously eliminated IBM from the competitive range, and that the DoD’s future courses of action, based on his decisions, could benefit his son’s employer if the DoD re- competed the contract. He said he recused himself to avoid making decisions that could create any appearance of a potential conflict of interest. Deputy Secretary Norquist, Mr. Chewning, and DoD SOCO’s Mr. Thompson confirmed this testimony about the rationale for the recusal and the timing of the recusal. We found no evidence that the White House influenced his decision to recuse.

Deputy Secretary Norquist’s Decision to Proceed with a Contract Award

Deputy Secretary Norquist told us he was not influenced by the White House regarding his October 7, 2019, decision to “finalize the JEDI source selection and award in accordance with the current Request for Proposals.” We determined that when he made this decision, Deputy Secretary Norquist did not know whether the Source Selection Authority would select Amazon or Microsoft. Deputy Secretary Norquist’s decision was not to award the contract to a specific competitor; it was a decision to proceed with the award despite ongoing and threatened future protests and litigation by previously eliminated competitors. We concluded that Deputy Secretary Norquist’s decision was not based on any influence or pressure from White House officials to proceed, or not to proceed, with the contract award.

Various Communications between DoD and White House Officials

(FOUO) We also learned of other contacts between DoD and White House officials about JEDI. As discussed above, [REDACTED]

[REDACTED] Both the CCPM and former DDS Director Chris Lynch told us that this contact did not have any influence on the JEDI procurement, and told us that there was no further communication from [REDACTED]. We were unable to obtain information about Mr. Sweeney’s communications [REDACTED].

(FOUO) [REDACTED] because Agency Counsel instructed him not to answer our questions about presidential communications.

Mr. Deasy also told us that when he met President Trump at a White House event on February 11, 2019, the President asked him whether Mr. Deasy was aware of “cloud noise.” Mr. Deasy said he responded that he had heard “noise” about the JEDI Cloud and that was the end of the conversation. He also told us that this conversation had no impact on the procurement.

White House CIO Mr. Roger L. Stone also questioned Mr. Deasy regarding the possibility of the White House CIO’s office placing orders against the future JEDI contract after award. Mr. Deasy said the two discussed secured communications capabilities, but did not discuss contract competitors. The DoD provides communications services to the White House, and as DoD CIO Mr. Deasy oversees the provision of those services. We concluded that this contact from a White House official did not influence the procurement.

We also determined that Mr. Deasy and Mr. Ranks went with Mr. Chewing to the White House on July 10, 2019, to brief Mr. Mulvaney and Mr. Blair about the “Cloud 101” and digital strategy, and to provide a “factual grounding of the [JEDI Cloud] program.” They said they returned to the White House on July 18, 2019, to brief Mr. Kupperman about the same topics. We reviewed the briefing materials they used in their presentations and these materials did not include specific cloud competitors. We could not obtain information from Mr. Chewing about these White House meetings because Agency Counsel instructed him not to answer our questions about presidential communications and whether the impetus for the briefings came from the White House or from the DoD, and why.

In sum, while our review was limited by invocation of a “presidential communications privilege,” we did not find evidence to conclude that the DoD personnel who made the source selection for the JEDI contract were influenced or pressured to select or not to select a particular competitor for the contract. The DoD personnel who made the selection told us that public statements and “media swirl” about the contract did not directly or indirectly influence the integrity of the procurement process or the outcome of the JEDI Cloud source selection. The evidence we received did not show that the White House, President Trump’s public statements, or media reports about the JEDI Cloud procurement influenced the actions of the PCO, any member of the JEDI Cloud Source Selection Team, any member of the CCPO, or any other DoD official involved in the procurement. We also did not find evidence that any DoD official, acting on behalf of the White House, influenced the source selection process.

IV. ETHICAL CONDUCT – DEPARTMENT OF DEFENSE OFFICIALS

We also investigated allegations that former DoD officials engaged in ethical misconduct related to the JEDI contract.

For example, in a letter to the DoD OIG, Representatives Womack and Cole expressed concern that unnamed, “high-ranking” DoD officials involved with the development of the JEDI Cloud procurement had “significant connections to a specific contractor,” but did not identify the contractor. Additionally, three separate letters that one of the contractors competing for the JEDI Cloud procurement sent to us alleged that six former DoD officials involved in the JEDI Cloud procurement had “improper commercial and financial relationships” with Amazon Web Services (AWS) or its affiliates, and

did not disclose these relationships to ethics officials as required. Finally, media articles reported that senior DoD officials who had connections to Amazon “gave Amazon an edge” in a “process that was rigged from the beginning” to favor Amazon over its competitors.

These various complaints identified Secretary James Mattis, Ms. Sally Donnelly, Mr. Anthony DeMartino, Mr. Robert Daigle, Mr. Victor Gavin, and Mr. Deap Ubhi as the six DoD officials alleged to have engaged in unethical misconduct. Specifically, the complaints alleged that these officials should not have participated in the JEDI Cloud procurement because some or all of them:

- had financial interests that conflicted with their duties related to the procurement;
- had personal or business relationships with AWS and its affiliates that might cause a reasonable person to question whether they could perform their JEDI Cloud procurement duties impartially;
- failed to disclose their conflicting financial interests or relationships with AWS;
- did not comply with post-Government employment standards;
- participated in the JEDI Cloud procurement despite being advised of potential conflicts;
- gave preferential treatment to AWS;
- provided AWS with improper access to material and competitively sensitive information related to the procurement;
- had a duty to avoid creating an appearance of impropriety and failed to do so by holding private meetings with AWS officials; and
- made one or more false statements to DoD and AWS officials about a specific conflict of interest (Mr. Ubhi only).

We subsequently received a referral from the DoD Standards of Conduct Office (SOCO), informing us that Ms. Stacy Cummings may have improperly participated in the JEDI Cloud procurement while holding a financial interest in Microsoft. In this section, we discuss the ethical rules that relate to these allegations, and the results of our investigation into these allegations.

We first provide an overview of the ethical obligations, prohibitions, and restrictions that applied to the seven DoD officials in their participation and respective roles in the JEDI Cloud procurement. In this overview we define terms that are important for evaluating ethical conduct pertaining to procurement ethics, such as “particular matter,” “participating personally,” “participating substantially,” and “disqualification.” We provide the full citations for these standards in Appendix E of this report.

We then present the evidence we found and our conclusions pertaining to ethical conduct for each of the six former DoD officials individually. Specifically with Mr. Ubhi, we detail his contacts with AWS regarding employment opportunities and his actions during the early stages of the JEDI Cloud procurement.

Finally, we provide our overall conclusions regarding the ethical conduct of these former DoD officials and whether it affected the integrity of the JEDI Cloud procurement.

a. False Statements

It is a criminal offense to knowingly and willfully falsify, conceal, or cover up a material fact; to make a materially false, fictitious, or fraudulent statement or representation; or to make or use any false or fictitious writing or document, when the statement pertains to a matter within the jurisdiction of any branch of the U.S. Government.¹¹⁴

b. Basic Ethics Obligations

The Joint Ethics Regulation (JER) states that Government employees may not use their public office for their own private gain or for the gain of persons with whom they are affiliated in a non-governmental capacity. Government employees are obliged to act impartially and not give preferential treatment to any private organization or individual, and they should avoid any action that may create an appearance that they are violating the law or ethical standards. Employees acting in an official capacity may not state or imply that they endorse a non-Federal entity, product, or service. They also may not use non-public information to further their own private interest or that of another, or engage in financial transactions using non-public information.¹¹⁵

According to the JER, employees that rely in good faith on the advice of agency ethics officials in conducting their official duties shall not be subject to disciplinary action for certain ethics violations under the Joint Ethics Regulation, provided that they fully disclosed to ethics officials all relevant circumstances when they sought advice.¹¹⁶

c. Restrictions on Participating in Particular Matters

The JER prohibits employees from participating personally and substantially in an official capacity in a particular matter in which they have a financial interest, if the particular matter will have a direct and predictable effect on that interest.¹¹⁷

The JER also states that if an employee knows that other interests [meaning other than a conflicting financial interest] or circumstances exist that would cause a reasonable person with knowledge of the relevant facts to question their impartiality in a particular matter involving specific parties, the employee should not participate in the matter without prior authorization.¹¹⁸

¹¹⁴ Title 18, U.S.C. § 1001, "Statements or entries generally."

¹¹⁵ JER, Chapter 2, Section 1, "Standards of Ethical Conduct," incorporating Title 5, Code of Federal Regulations (C.F.R.), Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch;" and JER, Chapter 3, Paragraph 3-209, "Endorsement."

¹¹⁶ JER, Chapter 2, Section 1, incorporating Title 5, C.F.R., Part 2635, Subsection 2635.107, "Ethics Advice."

¹¹⁷ JER, Chapter 2, Section 1, incorporating Title 5, C.F.R., Part 2635, Section 2635.402, "Disqualifying Financial Interests."

¹¹⁸ JER, Chapter 2, Section 1, incorporating Title 5, C.F.R., Part 2635, Section 2635.502, "Personal and Business Relationships."

In addition, the JER states that DoD employees may not engage in official activities in which a non-Federal entity is a party or has a financial interest if the employee has been an officer in the non-Federal entity within the last year.¹¹⁹

Presidential Executive Order 13770 also requires political appointees to pledge to refrain from participating in any particular matter involving specific parties that relates directly and substantially to the appointee's former employer or former clients.¹²⁰

According to the JER, "particular matters," in the context of identifying and mitigating conflicting financial interests, involve deliberation, decision, or action focused on the interests of specific persons. Particular matters may include a contract, and may also include policy-making that is narrowly focused on the interests of a discrete and identifiable class of persons. A particular matter does not include the consideration or adoption of broad policy options that are directed at the interests of a large and diverse group of persons.¹²¹

The FAR focuses the issue of participation in particular matters on Federal agency procurements and provides definitions that apply to this investigation. Federal agency procurement means the acquisition, by contract, of goods or services from non-Federal sources using appropriated funds. Participating personally means participating directly, and includes the direct and active supervision of a subordinate's participation in the matter. Participating substantially means the official's involvement is of significance to the matter. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Participation may be substantial even though it is not determinative of the outcome of a particular matter. Participating personally and substantially in a Federal agency procurement means active and significant involvement in (1) drafting, reviewing, or approving the specification or statement of work, (2) preparing or developing the solicitation, (3) evaluating bids or proposals, or selecting a source, (4) negotiating price or terms and conditions of the contract, or (5) reviewing and approving the award of a contract.

Generally, an official will not be considered to have participated personally and substantially in a procurement solely by participating in agency-level boards, panels, or other advisory committees that evaluate and make recommendations regarding alternative technologies or approaches for satisfying broad agency-level missions or objectives.¹²²

d. Responsibility to Disclose Financial Interests

Title 5, Code of Federal Regulations, § 2634.202, defines "Public Filer," in part, as an officer or employee in the executive branch, including a special Government employee, whose position is classified above GS-15 of the General Schedule or whose rate of basic pay is greater than 120% of the minimum rate of basic pay for GS-15 of the General Schedule.

¹¹⁹ JER, Chapter 3, Paragraph 3-204, "Impartiality of DoD Employment."

¹²⁰ Executive Order 13770, "Ethics Commitments by Executive Branch Employees."

¹²¹ JER, Chapter 2, Section 1, incorporating Title 5, C.F.R., Part 2635, Section 2635.402, "Disqualifying Financial Interests."

¹²² FAR 3.104-1, "Definitions."

Office of Government Ethics (OGE) Form 278e, “Public Financial Disclosure Report,” must be filled out by members of the Senior Executive Service whose pay exceeds 120 percent of the minimum rate of basic pay for a GS-15 of the general schedule; employees in positions exempted from the competitive services because of their confidential or policy making character; and presidential nominees to positions that require the advice and consent of the U.S. Senate. It lists employment, assets, income, sources of compensation, liabilities, gifts, and travel reimbursements for the employee and spouse. This form is used to help determine actual or potential conflicts between their Government responsibilities and their private interests and activities.

According to the JER, any employee who becomes aware that their financial or other interests conflict with their personal and substantial participation in a particular Government matter is disqualified from participating in the matter, and must notify their supervisor in writing upon determining that they may not participate. Another term commonly used to describe this disqualification decision is to “recuse” from a particular matter.¹²³

The JER contains similar rules that restrict participation by employees who seek employment outside the Federal Government, or who received “extraordinary payments” from former employers. Employees must recuse from participating personally and substantially in a particular matter involving specific parties if they know the matter would have a direct and predictable effect on the financial interests of their former employer, or an employer with whom they have an arrangement concerning future employment, or a prospective employer with whom the employee is seeking employment.¹²⁴ Also, an employee is disqualified for 2 years from participating in any particular matter in which a former employer is a party or represents a party if he received an extraordinary payment, valued at over \$10,000, from that person prior to entering Government service.¹²⁵

e. Protecting the Integrity of Federal Agency Procurements

The FAR addresses procurement integrity and incorporates various standards of conduct, obligations, and restrictions that are summarized above. It also states that a present or former official of the United States who has or had access to contractor bid or proposal information or source selection information must not, other than as provided by law, knowingly disclose or obtain contractor bid or proposal information, or source selection information, before the award of a Federal agency procurement contract to which the information relates.¹²⁶

However, the FAR encourages Government agencies to exchange information with industry, “from the earliest identification of a requirement through receipt of proposals,” to “improve the understanding of Government requirements and industry capabilities.”¹²⁷

¹²³ JER, Chapter 2, Section 1, incorporating Title 5, C.F.R., Part 2635, Subsections 2635.402(c), and 2635.502(e), “Disqualification;” and JER Chapter 2, Section 2, Paragraph 2-204, “Standard for Accomplishing Disqualification.”

¹²⁴ JER, Chapter 2, Section 1, incorporating Title 5, C.F.R., Part 2635, Subpart F, “Seeking Other Employment.”

¹²⁵ JER, Chapter 2, Section 1, incorporating Title 5, C.F.R., Part 2635, Section 2635.503, “Extraordinary Payments from Former Employers.”

¹²⁶ FAR Part 3, “Improper Business Practices and Personal Conflicts of Interest,” Subpart 3.1, “Safeguards,” Section 3.104, “Procurement Integrity.”

¹²⁷ FAR 15.201, “Exchanges With Industry Before Receipt of Proposals.”

In an April 24, 2017, memorandum, "Dialogue with Industry," Secretary Mattis issued guidance to the Secretaries of the Military Departments and the Chiefs of the Military Services regarding dialogue with industry. In his memorandum, Secretary Mattis wrote,

I expect you to engage with and work collaboratively with private industry in a fair and open manner and a sense of urgency must accompany your initiative to collaborate intensely with industry to discover and field offsetting advantages ... within legal boundaries to ensure we have the fewest regrets when we confront our enemies.

In a March 2, 2018, memorandum, "Engaging with Industry," Deputy Secretary of Defense Shanahan wrote that it was DoD policy for Department officials to "have fair, even, and transparent dialogue with industry on matters of mutual interest, as appropriate, in a manner that protects sensitive information, operations, sources, methods, and technologies." Deputy Secretary Shanahan noted that industry was often the best source of information about market conditions and technological capabilities, and that dialogue with industry helped industry to "make informed investment and business decisions necessary to meet near and long-term" DoD requirements.

In the following seven subsections, we present our findings and conclusions, in turn, regarding the allegations related to each of the seven former DoD officials.

1. Mr. Deap Ubhi

Complaints we received alleged that Mr. Ubhi "led" the JEDI Cloud procurement as the Defense Digital Service (DDS) "Lead Project Manager," influenced and implemented the decision to adopt a single cloud and single contractor solution, and played a key role in defining the Request for Proposals (RFP) requirements, all of which allegedly benefitted Amazon Web Services (AWS). He allegedly engaged in these activities while simultaneously negotiating for a position with AWS, but failed to recuse himself from participating in matters that involved AWS during these employment negotiations. Mr. Ubhi also allegedly recused himself only after he accepted a job with AWS, but he allegedly provided a false reason to DoD officials for why he needed to recuse himself.

To conduct our investigation regarding Mr. Ubhi, we interviewed witnesses and reviewed documents such as e-mails, memorandums, letters, Mr. Ubhi's non-disclosure forms, disqualification (recusal) statements, ethics training records, Google Drive slack messages, Google calendar invitations, meeting agendas, draft DoD Cloud problem statements, one-on-one vendor meeting questions and responses, draft and final versions of DoD Cloud market research reports, information papers, briefing slides, meeting notes, DoD Cloud policy memorandums, AWS human resource records, documents associated with the Procuring Contracting Officer's (PCO) investigation, documents associated with the GAO's review of the procurement, and the U.S. Court of Federal Claims (COFC) protest filings from Oracle and the DoD's response.

In this investigation, we examined Mr. Ubhi's employment with DDS, what projects he worked on in that capacity, and his contacts with Amazon prior to September 2017 when the DoD announced and launched the Cloud Adoption Initiative, the precursor to the JEDI Cloud procurement. We also examined his involvement in the DoD Cloud Adoption Initiative from September to November 2017,

when he resigned from DoD. In addition, we examined the circumstances of his contacts and subsequent acceptance of employment with AWS and his resignation from the DoD in November 2017.

We attempted to interview Mr. Ubhi; however, he declined to be interviewed, citing the advice of his counsel.

a. Background

From March 2006 to December 2014, Mr. Ubhi established several platform companies, such as Burrp.com, India's first local review and recommendations platform for finding the best offers at local restaurants, cafes, bars, and pubs.¹²⁸ In 2010, Mr. Ubhi founded Hopscout.com, an e-commerce platform for children's products. He later served as the Chief Operating Officer for Freecharge, a mobile rewards platform.

From January 2014 to January 2016, Mr. Ubhi worked for AWS Business Development as a cloud technology expert for Startups, Accelerators, and Incubators.¹²⁹ In January 2016, Mr. Ubhi resigned from his position with AWS and founded Tablehero, a restaurant reservation platform to increase restaurant online ordering and reservation capabilities. After founding Tablehero, he then discussed with Amazon officials a possible partnership between Tablehero and Amazon Restaurants, a food delivery service.¹³⁰

On August 22, 2016, Mr. Ubhi began working for the DoD's Defense Digital Service (DDS) as a Digital Service Expert. The DDS is a digital technology office reporting to the Secretary and Deputy Secretary of Defense. According to DoDD 5105.87, "Director, Defense Digital Service (DDS)," DDS is composed of commercially experienced software developers, software designers, product managers, and problem solvers within the DoD. According to DoDD 5105.87, DDS has three key missions: (1) working on specific projects or programs in support of the DoD in a hands-on way to materially improve digital services; (2) driving game-changing evolution in the way the DoD builds, buys, and deploys digital services and supporting technology; and (3) bringing together the best-in-class private sector practices, talent, and technology to transform the way digital services are delivered within the DoD. For example, the DDS office was responsible for the "Hack the Pentagon" program launched in 2016, an effort to strengthen the security of DoD systems.

As described in more detail below, beginning in February 2017, Mr. Ubhi held discussions with AWS personnel regarding his potential return to AWS employment.

On September 13, 2017, Mr. Ubhi was assigned to a DDS team responsible for implementing Deputy Secretary Shanahan's DoD Cloud Adoption Initiative, the precursor to the JEDI Cloud procurement. From September 22, 2017, through October 26, 2017, Mr. Ubhi participated in the early

¹²⁸ A platform company is the initial acquisition made by a private entity firm in a specific industry or investment type.

¹²⁹ A startup is a company or project initiated by an entrepreneur to seek, develop, and validate a scalable business model. Accelerators advance the growth of existing companies with an idea and business model in place. Incubators invest time and resources into advancing local startups and are generally tasked with creating jobs or finding ways to license intellectual property.

¹³⁰ Amazon discontinued its Amazon Restaurants service on June 24, 2019.

stages of the DoD Cloud Adoption Initiative. At the same time, he was negotiating employment with AWS. On October 27, 2017, Mr. Ubhi accepted employment with AWS.

On October 31, 2017, Mr. Ubhi disqualified himself from participating in the JEDI Cloud procurement, telling his supervisors that he had an ongoing joint business venture with AWS and Tablehero as the reason for his recusal.

On November 13, 2017, Mr. Ubhi resigned from the DoD effective November 24, 2017. He began working for AWS as the Leader, Startup Program Manager, on November 27, 2017.

We describe these events in more detail below.

Table 2 lists a chronology of significant events related to Mr. Ubhi's employment with AWS, the DoD Cloud Adoption initiative, and the JEDI cloud procurement.

Table 2. Chronology of Mr. Ubhi's Significant Events related to AWS and the JEDI Cloud.

Date	Event
Jan. 2014 – Jan. 2016	Mr. Ubhi works for Amazon Web Services (AWS), as a cloud technology expert for Startups, Accelerators, and Incubators.
Jan. 2016	Mr. Ubhi resigns from AWS.
Jan. 2016	Mr. Ubhi creates Tablehero, a startup restaurant reservation platform for online ordering, and discusses with Amazon Restaurant officials a possible partnership between Tablehero and Amazon Restaurants.
Aug. 22, 2016	Mr. Ubhi begins employment with the DoD Defense Digital Services (DDS) as a Digital Services Expert.
Dec. 2016	Amazon declines Mr. Ubhi's Tablehero partnership proposal.
Sep. 2016	Mr. Ubhi receives his initial ethics briefing from the DDS General Counsel.
Feb. 7, 2017	Mr. Ubhi meets his former AWS supervisor for coffee and tells him that he is "starting to consider leaving the Government."
Feb. 13, 2017	DDS General Counsel arranges for a DoD Standards of Conduct Office (SOCO) attorney to provide annual ethics training to all DDS employees. Mr. Ubhi declines the meeting invitation because he is currently on official Government travel.
Feb. 22, 2017	The DDS General Counsel e-mails Mr. Ubhi and advises him to contact the designated ethics official because of a potential "financial conflict of interest" involving his current Government project and Amazon.
Feb. 24, 2017	The SOCO attorney advises Mr. Ubhi "in writing" that he did not have a financial conflict of interest based on the information Mr. Ubhi provided to the attorney.
Apr. 26, 2017	Mr. Ubhi begins e-mail conversations with his former AWS supervisor and an AWS Managing Director about an opportunity for Mr. Ubhi to return to AWS as AWS Europe, Middle East, and Africa [EMEA] Startup Team Lead.
May 2, 2017	AWS Managing Director e-mails Mr. Ubhi to see if he is "interested in chatting about what we are doing in EMEA."
May 8, 2017	Mr. Ubhi e-mails the AWS Managing Director and his former AWS supervisor, "definitely still interested" in the EMEA Team Lead job opportunity.
May 16, 2017	Mr. Ubhi e-mails the AWS Managing Director and his former AWS supervisor stating "at your convenience" to discuss the EMEA Team Lead position.
May 30, 2017	Mr. Ubhi e-mails the AWS Managing Director and asks about levels of compensation for the EMEA Team Lead position.

Jun. 2, 2017	Mr. Ubhi becomes a candidate for the AWS EMEA Startup Business Development Team Lead.
Jun. 6, 2017	Mr. Ubhi e-mails his former AWS supervisor a proposed concept for an Amazon healthcare startup business for U.S. veterans.
Jun. 21, 2017	Mr. Ubhi receives an e-mail from the DDS Chief of Staff and then meets with the DDS General Counsel and discusses ethics and his financial assets.
Jul. 25, 2017	Mr. Ubhi interviews for the AWS EMEA Team Lead position.
Aug. 6, 2017	Mr. Ubhi e-mails the AWS Vice President and proposes a “healthcare business” for Amazon.
Aug. 4, 2017	Mr. Ubhi declines from consideration for the AWS EMEA Team Lead position.
Aug. 20, 2017	AWS Vice President declines Mr. Ubhi’s proposed healthcare business concept.
Sep. 13, 2017	Deputy Secretary Shanahan issues “Accelerating Enterprise Cloud Adoption” memorandum that establishes the CESG and tasks DDS to lead the first phase of a “cloud adoption initiative.”
Sep. 13, 2017	DDS Director begins forming the cloud team and begins commercial cloud market research, requirements development, and acquisition planning.
Sep. 13, 2017	The DDS Director selects Mr. Ubhi to be a Cloud Adoption Initiative team member working on cloud market research.
Sep. 22, 2017	Mr. Ubhi e-mails and telephones his former AWS supervisor to discuss an available job with AWS commercial Startup team.
Sep. 29, 2017	Mr. Ubhi’s former AWS supervisor sends e-mails to discuss roles Mr. Ubhi can perform if he returns to employment with AWS.
Sep. 29, 2017	The offices of the DoD CIO and USD(AT&L) personnel conduct the first of 11 cloud focus sessions with the Military Services, DoD agencies, and technology industry leaders as part of market research to share their perspectives on current cloud initiatives, lessons learned, and government trends. Mr. Ubhi does not attend this first session with the U.S. Marine Corps.
Oct. 3, 2017	Mr. Ubhi prepares a draft three page problem statement for the Enterprise Cloud initiative.
Oct. 3, 2017	Mr. Ubhi responds to his former AWS supervisor’s September 29, 2017, e-mail, “I am verbally giving you a commitment to rejoin [AWS] Startup BD [Business Development].”
Oct. 12, 2017	DDS begins conducting the first of eight one-on-one meetings with contractors. Mr. Ubhi attends this meeting with Nutanix with several other DDS team members to learn about Nutanix’s commercial cloud service offerings.
Oct. 13, 2017	The offices of the DoD CIO and USD AT&L hold a cloud focus session with the Defense Information Systems Agency (DISA) to discuss DISA’s future cloud needs, which includes its use of vendors to meet requirements. Mr. Ubhi attends this cloud focus session.
Oct. 16, 2017	The offices of the DoD CIO and USD AT&L hold a cloud focus session with the Defense Logistics Agency (DLA) to learn about DLA’s future cloud needs, which includes their use of vendors to meet requirements. Mr. Ubhi attends this cloud focus session.
Oct. 17, 2017	The offices of the DoD CIO and USD AT&L hold a cloud focus session with the U.S. Army to discuss its future cloud needs, which includes their use of vendors to meet requirements. Mr. Ubhi attends this session.
Oct. 17, 2017	The AWS recruiter posts the requisition for the Leader, Startup Program Management position on the Amazon website.
Oct. 18, 2017	Mr. Ubhi, as part of the DDS market research team, attends a one-on-one meeting with Amazon to learn about its commercial cloud service offerings.

Oct. 19, 2017	Mr. Ubhi and the DDS market research team attend a one-on-one meeting with Microsoft to learn about its commercial cloud service offerings.
Oct. 20, 2017	Mr. Ubhi submits his online application for employment with AWS.
Oct. 24, 2017	Mr. Ubhi and the market research team attend a one-on-one meeting with VMWare to learn about its commercial cloud service offerings.
Oct. 24, 2017	Mr. Ubhi discusses compensation and terms of employment with an AWS recruiter. Mr. Ubhi falsely tells the recruiter that he received permission from DoD ethics officials to move forward with his employment discussions, was required to recuse himself from working on a program at the DoD, and was precluded from working with the AWS public sector team.
Oct. 25, 2017	(FOUO) AWS offers Mr. Ubhi the Leader, Startup Program Management position, with an annual salary of [REDACTED] and a signing bonus of [REDACTED] to be paid in 12 monthly installments.
Oct. 26, 2017	Mr. Ubhi and the market research team attend a one-on-one meeting with Google to learn about its commercial cloud service offerings.
Oct. 27, 2017	Mr. Ubhi accepts the job offer from AWS.
Oct. 30, 2017	The DoD releases a DoD Cloud Request For Information (RFI) and requests responses by November 17, 2017. Mr. Ubhi tells the DDS General Counsel that Amazon approached him about purchasing his startup company "Tablehero."
Oct. 31, 2017	Mr. Ubhi calls a SOCO attorney and states that Amazon was interested in buying his company, Tablehero. The SOCO attorney advises him to recuse himself from all matters affecting Amazon. Mr. Ubhi sends an e-mail to the DDS Director recusing himself. On instruction from the DDS Director, a DDS Administrator removes Mr. Ubhi's access from the JEDI Google drive, Slack drive, and all JEDI-related data storage environments.
Oct. 31, 2017	The PCO begins an investigation to determine whether Mr. Ubhi's actions negatively impacted the integrity of the JEDI procurement.
Nov. 13, 2017	Mr. Ubhi submits his resignation from the DoD, effective November 24, 2017.
Nov. 24, 2017	Mr. Ubhi resigns from the DoD.
Nov. 27, 2017	Mr. Ubhi begins his employment with AWS as the Leader, Startup Program Manager.
Jan. 16, 2018	The DoD Chief Management Officer (CMO) appoints a military officer as the "first Cloud Computing Program Manager (CCPM)," to lead the newly formed Cloud Computing Program Office (CCPO).
Mar. 27, 2018	The CCPO completes a JEDI Cloud Market Research Report that summarizes market research activities and findings captured by DDS on behalf of the CESG.
Apr. 11, 2018	The DoD CMO and CCPM approve the Business Case Analysis.
Jul. 19, 2018	Ms. Lord signs a Determination and Findings, Authority to Award a JEDI Cloud Task Order Contract to a Single Source
Jul. 23, 2018	The PCO completes her investigation and determines that Mr. Ubhi promptly recused himself from participating in the early stages of the JEDI Cloud procurement once Amazon expressed interest in doing business with his company, Tablehero, and that his connections to Amazon did not negatively impact the integrity of the JEDI Cloud procurement. The PCO was not aware, at this time, of Mr. Ubhi's employment negotiations with AWS.
Aug. 6, 2018	Oracle files a pre-award protest with the GAO arguing, among other matters, that the DoD failed to properly consider conflicts of interest, including assertions about Mr. Ubhi and his connections to AWS.
Oct. 10, 2018	IBM files a pre-award protest with the GAO and makes assertions similar to those made by Oracle in its GAO protest.

Oct. 12, 2018	The PCO receives Amazon's JEDI Cloud proposal, which includes Amazon's Organizational Conflict of Interest Mitigation plan and an affidavit from Mr. Ubhi stating that he did not disclose any procurement information with Amazon.
Nov. 14, 2018	The GAO reviews Oracle's assertions regarding a conflict of interest involving Mr. Ubhi and declines to consider the protest that the PCO's assessment was flawed.
Dec. 6, 2018	Oracle files a pre-award protest in the U.S. Court of Federal Claims.
Dec. 7, 2018	The PCO e-mails Amazon to ascertain whether Amazon sought to obtain procurement information from Mr. Ubhi after his return to AWS employment.
Dec. 11, 2018	The GAO dismisses IBM's protest without review because the matters protested are before the U.S. Court of Federal Claims.
Dec. 14, 2018	Amazon sends the PCO a subsequent affidavit from Mr. Ubhi in which he states that he did not, and will not, provide Amazon any JEDI Cloud procurement information.
Feb. 12, 2019	Amazon notifies the PCO that Amazon never offered to purchase Tablehero and that Mr. Ubhi misrepresented to the DoD his reasons for recusing himself from the JEDI procurement on October 31, 2017. The PCO conducts a reassessment of potential impacts of these issues on the procurement's integrity.
Apr. 9, 2019	The PCO completes the reassessment and concludes that Mr. Ubhi's participation in the early stages of the JEDI Cloud procurement had no substantive impact on the procurement's early products and decisions, and that Mr. Ubhi did not introduce any bias toward AWS into the procurement.
Apr. 9, 2019	The PCO completes Amazon's Organizational Conflict of Interest Determination Investigation and concludes that no organizational conflict exists and that Amazon has not been given an unfair competitive advantage in the JEDI Cloud RFP.
Jul. 19, 2019	The U.S. Court of Federal Claims enters a judgment in favor of the DoD. The Court's opinion states that the PCO's determinations that conflicts of interest did not impact the procurement were rational and consistent with the FAR, and that the PCO's work was thorough and even-handed.
Nov. 21, 2019	The U.S. Attorney for the Eastern District of Virginia (EDVA) reviews the allegations and evidence from the DoD OIG that Mr. Ubhi made false statements to DoD officials about his reasons for recusing from the JEDI Cloud procurement and whether his actions violated Title 18, U.S.C. § 1001. The EDVA declines prosecution. When asked about the reasons for the declination, it advises that it does not comment publicly on prosecutorial decisions.

b. Mr. Ubhi's Work in the Defense Digital Service (DDS)

As shown in the chronology table, on August 22, 2016, Mr. Ubhi began working for the DDS. According to his Office of Personnel Management (OPM) file, Mr. Ubhi was appointed as a DDS Digital Services Expert, under a special hiring authority for IT modernization and Smarter IT delivery initiative. Mr. Ubhi was hired by DDS as a Product Manager.

In September 2016, Mr. Ubhi received his initial ethics briefing from the DDS General Counsel, who advised him about financial conflicts of interest, gift rules, contract-Federal interactions, and post-Government employment restrictions. The DDS General Counsel said she provided Mr. Ubhi's initial ethics briefing, which is something she did with all DDS employees as their embedded General Counsel. The DDS General Counsel told us that because of Mr. Ubhi's prior employment with Amazon, he had a 1-year "cooling off" period from January 2016 to January 2017, during which he was prohibited from

participating personally and substantially in any particular DoD matter related to Amazon.

From August 2016 until his September 2017 appointment to DDS's DoD Cloud Adoption Initiative team, Mr. Ubhi worked as a DDS Product Manager on the U.S. Military Entrance Processing Command (MEPCOM) Digital Integrated Resource System (MIRS) project for the U.S. Army. Mr. Ubhi was responsible for setting up electronic records transfer between MEPCOM systems for the Army, Navy, and Air Force. He also worked with Army Cyber Command on projects that included developing drone detection technologies, hunting adversaries on DoD networks, and redesigning training for cyber soldiers. He led the refactoring and reengineering of core application and infrastructure stack that facilitated end-to-end military recruiting.¹³¹

An Amazon attorney told the DoD PCO that in December 2016, Amazon notified Mr. Ubhi that they had declined to purchase his Tablehero business partnership that he had proposed to Amazon Restaurants in January 2016, prior to entering employment with DDS.

Mr. Ubhi's former AWS supervisor stated in an affidavit to Amazon, later provided to the DoD PCO, that he met Mr. Ubhi at a coffee shop on February 7, 2017. The former supervisor wrote that at that time Mr. Ubhi was "starting to consider leaving the Government." The former AWS supervisor also wrote that the "purpose of our getting together was simply to catch up with a former colleague," and that they "did not discuss the possibility of Mr. Ubhi rejoining AWS" on this occasion.

c. Potential Conflict of Interest Regarding Mr. Ubhi's Work on the Army's MIRS Project

On February 13, 2017, the DDS General Counsel arranged for a DoD Standards of Conduct Office (SOCO) attorney to provide annual ethics training to all DDS employees. The Google calendar invitation showed that Mr. Ubhi declined the training meeting invitation. The DDS General Counsel told us that Mr. Ubhi did not attend the ethics briefing because he was on official Government travel at the time of the briefing.

On February 22, 2017, one month after Mr. Ubhi's AWS "cooling off" period ended, the DDS General Counsel e-mailed Mr. Ubhi and advised him to contact the designated SOCO ethics official because of a potential "financial conflict of interest" she perceived related to Mr. Ubhi's involvement on the MIRS project. The DDS General Counsel told us she referred Mr. Ubhi to SOCO out of caution based on his past employment with Amazon. In her e-mail to Mr. Ubhi, the DDS General Counsel wrote:

The decision being debated about the technology solution ADS intends to recommend to MEPCOM represents a financial conflict of interest for you given your past employment [with AWS]. I don't think you can be involved in any of these meetings or conversations that discuss this topic whatsoever, whether it's internal or with OSD, MEPCOM, or [Army]. I think your recusal needs to be coordinated with SOCO and done in writing Maybe I'm overreacting and

¹³¹ An infrastructure stack is a collection of infrastructure elements that is defined, provisioned, and updated as a unit. The elements of the stack are defined in source code, and may include a combination of compute, networking, and storage resources. A stack management tool reads the source code and interacts with an infrastructure platform to ensure the specified resources are provisioned as an instance of the stack.

SOCO can correct me, but I think there is an issue. It's a regulatory one that could be waived, but it seems like ... [another DDS employee] could take lead on this decision and then you could reengage once the decision is made. Please let me know as soon as you've engaged SOCO.

We asked the DDS General Counsel how this potential conflict of interest with Mr. Ubhi was resolved. In her response, the DDS General Counsel wrote that on February 24, 2017, a SOCO attorney advised Mr. Ubhi, "in writing," that, based on the financial information Mr. Ubhi provided to SOCO, and the fact his cooling-off period had expired, he "did not have a conflict of interest."

The DDS General Counsel said he did not remove Mr. Ubhi from the MEPCOM MIRS project because there was "no legal ethical obligation to do so." The DDS General Counsel said removal was not needed because Mr. Ubhi's 1-year cooling off period had expired already and Mr. Ubhi did not have a financial conflict of interest associated with the project. According to the DDS Deputy Director, after resolving the potential conflict issue with SOCO, Mr. Ubhi continued his work on "Army portfolio" projects.

d. Mr. Ubhi's Initial Efforts to Rejoin Amazon

Between April 2017 and August 7, 2017, while working as a DDS employee, Mr. Ubhi actively engaged on several occasions with AWS representatives regarding his potential return to AWS employment. According to an affidavit from Mr. Ubhi's former AWS supervisor that was later provided to the DoD PCO, there was a vacant position for the Leader of AWS's Europe, Middle East, and Africa (EMEA) startup team. The AWS supervisor wrote, "I hoped that he [Mr. Ubhi] might be interested in considering the open position with the EMEA team."

On April 26, 2017, Mr. Ubhi's former AWS supervisor sent an e-mail to Mr. Ubhi and to the AWS Managing Director who previously led the EMEA startup team, stating:

Deap [Ubhi] - I've told you about [AWS Managing Director] and the EMEA opportunity. He is someone you would really enjoy working with. [AWS Managing Director] - Deap is a rock star. He left our US based Startup BD team about 15 months ago to do another startup and may be looking to move back to AWS, and is interested in your plans for the EMEA team leadership.

On May 2, 2017, the AWS Managing Director sent Mr. Ubhi an e-mail continuing the employment dialogue, which stated, "I wanted to send another note and see if you are interested in chatting about what we are doing in EMEA." On May 8, 2017, Mr. Ubhi replied by e-mail, "definitely still interested in chatting about EMEA and how the startup team perceives its core challenges." On May 16, 2017, Mr. Ubhi e-mailed the AWS Managing Director and wrote that he was ready "at your convenience" to begin employment discussions about the "EMEA Startup BD [Business Development] Team Lead role."

On May 30, 2017, Mr. Ubhi e-mailed the AWS Managing Director about potential compensation that he would earn in this EMEA Team Lead position, asking:

- 1.) How real is the possibility that this position could be an L8 [internal AWS position level]
- 2.) [former AWS supervisor] discussed the existence of an ex-pat

compensation structure; can you explain to me exactly what that is, and how different that is from a more traditional Amazon comp structure; 3.) Ballpark, what is the all-in comp for this role?
Thank you, -d-[Deap Ubhi]

The AWS Managing Director responded on the same date,

Hi Deap. Yes any questions about the role itself, including compensation, location, expectations, etc. should come to me as this role reports into EMEA There is a real possibility that the role would be Level 8 It is far too early to be discussing the details of an expat assignment versus relocation ... too early to discuss all-in compensation.... There are many moving parts in compensation that make it impossible for me to give you a number.

The AWS Managing Director also sent an email and wrote:

I will make formal intro [introduction] for you to meet [Amazon representative] Executive Recruiting who will have a call with you. Following that discussion ... we want to move right to interviews.

Later on May 30, 2017, the AWS Managing Director sent an e-mail to an AWS Recruiter, stating:

I have had the chance to connect with Deap (copied), a former Amazonian and experienced startup founder. He is interested in considering the EMEA Startup BD Team Lead role, and I wanted to formally connect you so that we can initiate that discussion I am very confident in his background, and I wanted to make sure that he was connected with you. Would you mind connecting Deap directly so that we can start the process with him formally?

Mr. Ubhi replied to the AWS Managing Director on May 30, 2017, "I'm ready to move to the next logical step if you are. The role still intrigues me."

According to the AWS attorney, the AWS EMEA management team did not require Mr. Ubhi to submit a formal job application because of his prior work with AWS, and he became a candidate for the position on June 2, 2017.

On June 6, 2017, Mr. Ubhi e-mailed his former AWS Supervisor:

I've now had two conversations with [AWS Managing Directors] ... and I just spoke to an executive recruiter out of the UK ... taking something fractured or sub-optimal or broken and being asked to fix it is something I will always gravitate towards. It seems that EMEA Startup BD needs a bit of reset ... I'm certain I can do what needs to be done. The second motivation for me frankly speaking is a London adventure for a few years for my family and I. We would seek to come back to the Bay Area (or the US) after reaching some mutually agreed upon "steady state ... I also have a very deep desire to ultimately develop a business within Amazon, starting from a 6-pager narrative. This narrative will attempt to convince Amazon leadership to get into the healthcare business ... I also want you to know that ultimately, I want to very aggressively pursue writing

this narrative and then convincing our leadership that it is an investment worth exploring.

On June 9, 2017, Mr. Ubhi's former AWS Supervisor sent Mr. Ubhi an e-mail introducing him to an AWS vice president so that Mr. Ubhi could discuss his "idea for a [healthcare] business he may want to pursue at Amazon."

On June 21, 2017, the DDS Chief of Staff sent an e-mail to all DDS employees, including Mr. Ubhi, requiring each employee to meet with the DDS General Counsel to discuss their financial assets and ethics. The e-mail stated:

Due to DDS's increased involvement in procurement discussions, we are requiring each of you to sit with [DDS GC] for a 1-1 meeting to discuss your financial assets and the ethics concerning your current or future engagements. This is a completely private conversation, but necessary to ensure you're on solid footing with the criminal statutes. Please be prepared with the following information for you (and your spouse); List of employers for the last 12 months; List of stock holdings in companies regardless of value and approximate value; exclude mutual funds, sector funds below \$50,000; Include stocks that are part of a retirement portfolio; List of retirement portfolios with past employers; and Other investments (startups, VCs, etc.).

In a June 22, 2017, response to the DDS Chief of Staff's e-mail, Mr. Ubhi asked the DDS General Counsel if his conversation would be protected by attorney-client privilege. He also asked if the General Counsel was obligated to push their private conversations up the chain of command. The DDS General Counsel replied, "I have attorney-client privilege with the Federal government, not you as an individual." The General Counsel further wrote:

I am not an official DoD Ethics Counselor (EC). That matters because under the regulations if you follow the advice of an official EC, and they are wrong, you have legal safe harbor from any consequences. Also, depending on your circumstances, you might need a recusal letter, which has to be done by an EC. So we would definitely discuss it together.

According to the DDS General Counsel, they discussed Mr. Ubhi's ethical obligations and his financial assets, which included his, and his spouse's stock holdings in Amazon or other companies, and any retirement portfolios from his former employer during the previous 12 months.

According to an affidavit from Mr. Ubhi's former Amazon supervisor that Amazon provided to the DoD PCO during her investigation of the procurement's integrity, Mr. Ubhi interviewed for the EMEA Team Lead position in June 2017 and received an offer to join the EMEA on July 25, 2017. The affidavit did not specify the exact date of the interview.

On August 6, 2017, Mr. Ubhi sent an e-mail to the AWS Vice President describing his vision for the proposed healthcare business and wrote, "I am extremely interested/passionate about efforts that have the capability to transform healthcare through three essential pillars – technology ... delivery of care; and insurance/coverage of care."

According to the affidavit from Mr. Ubhi's former Amazon supervisor, on August 4, 2017, Mr. Ubhi declined from consideration for the AWS EMEA Team Lead position. On August 15, 2017, Mr. Ubhi sent his former AWS Supervisor another e-mail explaining why he had withdrawn. In this e-mail, Mr. Ubhi wrote:

In short, my time working with government, coupled with our current political climate, has seeded within me the desire to make an impact in whatever I do next ... my main takeaway as I think about how I want to invest the next 3-5 years of my life. In that vein, I am still extremely interested in pursuing building a healthcare business at Amazon ... I have shared with you the same 2 page narrative that I shared with [Amazon member] a few days ago. I have yet to hear back from him on it While my decision may have disappointed you, I hope it did not erode that trust.

On August 20, 2017, Mr. Ubhi received an e-mail from the AWS Vice President stating that there was no "matching interests" from Amazon regarding Mr. Ubhi's proposed startup healthcare business.

Throughout his entire employment with DDS from April 2016 to November 2017, Mr. Ubhi never disclosed to the DDS General Counsel, the WHS Assistant General Counsel (WHS AGC 1), the DDS Director, the DDS Deputy Director, the SOCO attorney, or any other DoD officials, that he had been seeking and discussing employment with AWS.¹³²

The DDS General Counsel told us in an interview that "it was a shock to all of us" that Mr. Ubhi had been seeking and was offered employment with AWS. The DDS General Counsel said that because of Mr. Ubhi's communications with AWS, Mr. Ubhi "shouldn't have been involved with it [JEDI Cloud procurement] since day one [of his work] on the JEDI procurement." The DDS General Counsel also said that Mr. Ubhi's pursuit of employment with AWS during the spring and summer of 2017 "far predated" when he began working on the DoD Cloud Initiative in September 2017. However, the DDS General Counsel said that although these early employment actions with Amazon pre-dated the Cloud Adoption initiative, Mr. Ubhi should have been transparent and "recused from all matters involving Amazon while he was in discussions about possible employment."

e. Mr. Ubhi Begins Working on the DoD Enterprise Cloud Adoption Initiative

On September 13, 2017, Deputy Secretary Shanahan issued a memorandum, "Accelerating Enterprise Cloud Adoption." The memorandum directed the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD[AT&L]) to chair a newly established Cloud Executive Steering Group (CESG). The memorandum also directed the DDS Director to use a tailored acquisition process to acquire a modern enterprise cloud service solution for the DoD.

That same day, the DDS Director began forming a team to execute these directions. The DDS Director selected Mr. Ubhi, a DDS Product Manager, to be on the DoD Cloud Initiative team and tasked him to research cloud services already available in the commercial marketplace.

The DDS Director told us that he selected Mr. Ubhi because he "is well respected, well known;

¹³² In this section of our report, WHS AGC 1 refers to the same person identified as the WHS AGC 1 in Section III.

great product manager” and because of his experience as an entrepreneur building software companies. The WHS AGC 1 said that in the initial stages of the DoD Cloud Initiative, DDS wanted to ensure that they avoided even the appearance of a conflict of interest. In September 2017, prior to Mr. Ubhi beginning work on the cloud initiative, the DDS General Counsel asked Mr. Ubhi to disclose financial interests for himself and his spouse, including ownership of any Amazon stock. The WHS AGC 1 stated that Mr. Ubhi did not disclose ownership of any financial interests in Amazon. Further, Mr. Ubhi did not disclose to the WHS AGC 1 that he had been seeking employment with AWS recently and discussing potential business ventures with AWS.

After his assignment to work on the DoD Cloud Initiative team, Mr. Ubhi turned his Army project over to another DDS employee and began working on the Cloud Initiative commercial market research as directed.

The WHS AGC 1 also told us that in addition to disclosing any potential conflicting financial interests, employees working on the Cloud Initiative had to sign a non-disclosure agreement (NDA). Mr. Ubhi was responsible for collecting the NDAs from all market research team members and providing them to the DDS General Counsel. The attorney told us that Mr. Ubhi “submitted an unsigned NDA that had his name filled out in typing,” on the form. The DDS General Counsel explained to us that she did not know why Mr. Ubhi did not sign his NDA. In an affidavit that Mr. Ubhi signed as part of the PCO’s 2019 procurement integrity investigation, however, Mr. Ubhi wrote, “I understand that I was (and remain) prohibited from disclosing non-public information relating to JEDI Cloud gained while employed by DDS.”

f. Mr. Ubhi’s Roles and Responsibilities in the DoD Cloud Initiative

The complaints we received alleged that Mr. Ubhi was the “Lead Project Manager” for the JEDI Cloud procurement. The WHS AGC 1 told us that the position of JEDI Program Manager was not in existence during Mr. Ubhi’s entire period of employment with DDS. Our review of documents from the CCPO and CMO identified that the first Program Manager for the JEDI Cloud was a military officer, appointed on January 16, 2018. We asked the current CCPM, who had served as DDS General Counsel and was appointed as CCPM in October 2018, to explain the difference between a Program Manager and a Product Manager, the DDS position Mr. Ubhi actually held. The current CCPM told us:

A Program Manager is responsible for all aspects of a program – staffing, budget, contracting, acquisition, delivery of services, etc. A Product Manager is only responsible for overseeing the technical development of a particular product. A Program Office can have many Product Managers (which is the case with DDS), but there is only one Program Manager. Mr. Ubhi had no responsibilities relative to budget, staffing, acquisition, and other programmatic functions that DoD Program Managers perform.¹³³

The DDS Director told us that Mr. Ubhi’s position in the DoD Cloud initiative was “Product Manager,” consistent with the role he played in other DDS projects. According to the DDS Director, Mr. Ubhi worked with the team to conduct market research that would help DDS “figure out” the requirements and how the JEDI Cloud would support a product in “austere environments.” According to

¹³³ Unless otherwise noted, the term CCPM refers to the current CCPM, who became the CCPM in October 2018, not the military officer appointed in January 2018.

the FAR Part 10, "Market Research," the DoD is required to conduct market research before developing requirements documents for an acquisition, and this process helps the DoD determine if commercial items are available that would meet the DoD's needs without needing to develop new DoD proprietary capabilities.¹³⁴ Market research occurs before the development of any requirements, solicitation of offers for an acquisition, and before awarding a task or delivery order under an ID/IQ contract. In essence, market research informs the DoD on what is available in the commercial market.

The DDS Director told us that Mr. Ubhi's team conducted research and outreach activities with DoD components and industry to determine if commercial items or non-developmental items were available to meet the DoD's needs. We discuss Mr. Ubhi's market research activities later in this report.

The DDS Deputy Director told us why the DDS Director assigned Mr. Ubhi to the Cloud Initiative market research team:

[Mr. Ubhi's] has a deep understanding of how Amazon's cloud work[ed] and understanding of that technology ... was helpful especially in early day's conversations to be able to explain concepts to folks in the context that he had. So, we'll [sic] him say things like, "When I was at Amazon VPC its virtual private clouds were used in this way. But I know Microsoft's cloud and Google's cloud, and Oracle's, and IBM's cloud can do the same things So, he would put things in the context of his own experiences, his own capacity.

The DDS Director also selected Mr. Ubhi to be one of three administrators responsible for DDS' Google Drive, and this role carried over to his Cloud Initiative team assignment. The DDS Google Drive is a specific computer drive that DDS personnel use to store, generate, and share information in support of their projects.¹³⁵ Google Drive included a private chat room known as Google Slack. The administrators provided access to chat about specific projects that DDS personnel were assigned to work. For example, DDS personnel assigned to work on the Cloud Initiative were the only employees authorized to access that section of the Google Drive.

The DDS Director told us that he tasked Mr. Ubhi to draft the DoD Cloud Initiative strategy document and business case analysis (BCA). He added that Mr. Ubhi's role in the BCA was to determine how to characterize the DoD's infrastructure using tools such as cost modeling. We further describe Mr. Ubhi's involvement with these two Cloud Initiative documents later in this report.

Witnesses told us that Mr. Ubhi's market research activities included cloud focus sessions and one-on-one meetings the team held with DoD components and contractors. According to the DDS General Counsel, Mr. Ubhi also attended CESG meetings where the CESG members discussed the pros and cons of a single-award versus a multiple-award acquisition strategy.¹³⁶ None of the witnesses recalled what Mr. Ubhi said during these meetings. Although Mr. Ubhi attended CESG meetings and observed its proceedings, he was not a CESG member.

¹³⁴ FAR 10.001(a)(2)(i)-(iii).

¹³⁵ Google Drive includes Google Docs, Google Sheets, and Google Slides, which are a part of an office suite that permits collaborative editing of documents, spreadsheets, and presentations.

¹³⁶ We explain the CESG and its functions in Section II of this report.

g. Mr. Ubhi Renews Employment Negotiations with AWS While Working on the DoD Cloud Initiative

Mr. Ubhi's former AWS supervisor stated that on September 22, 2017, he again exchanged e-mails and telephone calls with Mr. Ubhi about another possible job with an AWS commercial startup team.

On September 29, 2017, at 7:37 a.m., Mr. Ubhi's former AWS Supervisor e-mailed him about potential employment:

I know you're after something meaty and impactful (which is awesome). There are some themes of ideas I have that we can discuss. Examples of what you could be responsible for include ... 1. All (or a subset) of our major programs & products (in this case the major ones are Active, Connections (matching startups to enterprises), and hopefully the Startup Artificial Intelligence & Machine Learning program that we are discussing with [Amazon representative] this week).

...

I have attached the narrative we've sharing with [Amazon representative] next week for the AI/ML idea (ironically called DeepLaunch ... but we could rename this DeepLaunch after you.) 2. The incubation of new Startup BD programs ... 3. Operations and data analytics ... 4. Global training and Amazonian coaching ... 5. An evangelist-ish type role.

On the same day Mr. Ubhi was communicating with his former AWS supervisor about re-employment opportunities, the Offices of the DoD Chief Information Officer (CIO) and the Under Secretary of Defense for Acquisition, Technology, and Logistics began hosting the first of 11, 60-minute cloud focus sessions with the Military Services, DoD Components, and industry leaders. At the DoD sessions, the Services and Components shared information about their current cloud efforts and lessons learned. In the industry sessions, industry leaders shared their perspectives on trends and lessons learned that could help the DoD better understand its cloud technology needs. The first cloud focus session was with the U.S. Marine Corps; however, Mr. Ubhi did not attend that session.

The CCPM told us that Mr. Ubhi attended four of the 11 cloud focus sessions: the U.S. Navy, DISA, DLA, and the U.S. Army. According to the CCPM, while at the cloud focus sessions, Mr. Ubhi was in a "receive mode," meaning he was there to hear information from DoD components and industry leaders and capture their responses to help develop information that the Cloud Initiative team could use in preparing the problem statement and BCA his DDS supervisor had tasked him to draft. The CCPM also told us that Mr. Ubhi's role in the market research was to help understand the "marketplace's ability to meet DoD's cloud requirements" through commercially available capabilities.

Mr. Ubhi prepared an initial "Draft Problem Statement – Enterprise Cloud Solution," dated October 3, 2017. In the draft statement, Mr. Ubhi noted that the Secretary of Defense and Chairman of the Joint Chiefs of Staff recognized the importance of information as a "new, seventh joint function of the Armed Forces," and described the problem in a single paragraph:

The Department's current computing and storage infrastructure environment and approach, however, is too federated, too slow, and too uncoordinated to enable the military to rapidly utilize DoD's vast information to make critical, data driven decisions. The Department's lack of a coordinated enterprise approach to not only technological modernization of its computing and storage infrastructure but also data operationalization is a detriment to national defense.

The remainder of the three-page draft document described a vision for a modern DoD computing and storage environment; capability gaps in the areas of data operationalization, agility and elasticity, modern application development operations, and security; and success criteria.

On October 3, 2017, Mr. Ubhi replied to his former AWS supervisor's e-mail and accepted a job offer from AWS. Mr. Ubhi wrote, "I am verbally giving you a commitment to rejoin Startup BD [Business Development]." Mr. Ubhi continued:

I have digested your e-mail [September 29, 2017] over and over, and from your high level thoughts, I am listing the things that really excite me, and that I believe would simultaneously give me a large canvas, and be a vehicle for professional growth.

On October 5, 2017, the DoD held its second and third cloud focus sessions, with the U.S. Navy and IDA, as part of market research. According to the CCPM, Mr. Ubhi attended the session with the Navy, which was the first cloud focus session he had attended. The CCPM said that Mr. Ubhi attended in a "receive mode" to hear about the Navy's future cloud needs, which included its use of vendors to meet requirements.

We reviewed an affidavit from an AWS recruiter that Amazon provided to the DoD PCO during her investigation of the procurement's integrity. According to the affidavit, on October 10, 2017, Mr. Ubhi's former AWS supervisor asked the AWS recruiter to create a requisition for Mr. Ubhi to apply to a position on the AWS commercial startup team. The AWS recruiter then created a requisition for the AWS position of Leader, Startup Program Management that Mr. Ubhi would fill.

In addition to the DoD's 11 Cloud Focus sessions, the DoD hosted one-on-one meetings with eight different cloud technology companies from October 12, 2017, through January 26, 2018. In the market research team's documents, these were referred to as "vendor" meetings. Mr. Ubhi attended five of these eight one-on-one vendor meetings. Two other DDS market research team members also attended these one-on-one meetings. The first one-on-one vendor meeting was held on October 12, 2017, with Nutanix. The other companies that participated in one-on-one meetings that Mr. Ubhi attended were Amazon, Microsoft, VMWare, and Google. We discuss the meetings he attended in more detail later in this report.

~~(FOUO SSI)~~ We found that the five one-on-one meetings Mr. Ubhi attended followed a specific format and lasted between [REDACTED] minutes each. The purpose was for the market research team to understand the practices of contractors engaged in producing, distributing, and supporting commercial cloud solutions. The WHS AGC 1 told us the DDS personnel who facilitated the one-on-one meetings were to "contact subject matter experts and people knowledgeable to provide information about market capabilities [back to DDS leadership] to meet the Government's requirements." The information

gathered was later used to help DDS craft appropriate commercial terms and conditions in the solicitation.

The team asked each contractor the following eight previously-vetted standardized questions:

1. What does your hardware architecture look like with regard to cloud services?
2. *[If they don't provide hardware solution]* How does your company interact with a deployed cloud solution? Where does it hook in and how?
3. Talk to us about your approach to information security, specifically with regard to minimizing attack vectors and then identifying, mitigating, and containing issues.
4. How does account provisioning or service initiation work with your solution? What parts of this are automated versus requiring administrator interaction? And what about service termination?
5. How would you handle an installation at the edge of connectivity, including service initiation and eventual syncing?
6. Talk to us about moving data and services across network boundaries, both as it applies to peering internally and across physical networks.
7. What are the general service level expectations of your solution? When there is an outage, what is the process for both communication and getting back up? What is the process for updating both software and hardware? We're interested in both software and hardware issues and solutions.
8. What is your biggest weakness, and how are you working to improve in that area?

~~(FOUO SSI)~~ Mr. Ubhi's team created a written record of each vendor's one-on-one meeting. The DDS Deputy Director explained that the DDS team later created a consolidated record that summarized all of the interactions with the vendors. The market research report later referred to this consolidated meetings record to help indicate that [REDACTED]

On October 13, 2017, the DoD held a cloud focus session with DISA. According to the CCPM, Mr. Ubhi attended this cloud focus session to learn about DISA's future cloud needs, which included its use of commercial vendors to meet requirements.

On October 16, 2017, the DoD held a cloud focus session with DLA. According to the CCPM, Mr. Ubhi attended this session to learn about DLA's future cloud needs and its use of commercial vendors to meet requirements.

On October 17, 2017, the DoD held a cloud focus session with the U.S. Army. According to the CCPM, Mr. Ubhi attended this session to learn about the Army's future cloud needs and its use of

commercial vendors to meet requirements.

Also on October 17, 2017, the AWS recruiter posted the requisition for the Leader, Startup Program Management position on the Amazon job website. An AWS affidavit provided to the DoD PCO during the investigation of the JEDI Cloud procurement's integrity stated that Mr. Ubhi's former AWS supervisor contacted Mr. Ubhi and told him that he needed to "formally apply for this role."

On October 18, 2017, Mr. Ubhi and two DDS employees held a one-on-one vendor meeting with Amazon. The team's written record for this meeting stated that the team asked the eight standardized questions, which Amazon answered. Amazon's record of this meeting reflected that Mr. Ubhi and two DDS employees asked additional non-standardized open questions of Amazon. For example, Mr. Ubhi asked "who did SecDef [Secretary of Defense] meet with while last out in PA [Pennsylvania]?" Another DDS team member asked, "How will information security be offset?" The record did not annotate Amazon's responses to these two non-standardized questions.

On October 19, 2017, Mr. Ubhi and two DDS employees held a one-on-one vendor meeting with Microsoft. The written record for this meeting stated that the team asked the eight standardized questions, which Microsoft answered.

On October 20, 2017, Mr. Ubhi submitted his application for the Startup Program Management position to the AWS Recruiter. As part of his application, Mr. Ubhi represented to AWS that DoD ethics officials had determined he was not subject to any Government ethics agreement that would "preclude or restrict" his employment with Amazon.

On October 24, 2017, Mr. Ubhi and two DDS employees held a one-on-one contractor meeting with VMWare. The written record for this meeting reflected the team asked the eight standardized questions, which VMWare answered.

According to an AWS affidavit, on this same date, October 24, 2017, Mr. Ubhi represented to the AWS recruiter that he:

(1) spoke with his designated government agency ethics officials and disclosed that he was engaging in employment discussions with AWS; (2) received permission from the government ethics officials to move forward with the employment discussions with AWS and was given permission to accept an offer of employment should one be extended; (3) was required to recuse himself from a program [the Cloud Initiative] that he was working on at the Department of Defense ("DoD"); and (4) was precluded from working with the AWS public sector team. Mr. Ubhi never provided any detail, and I never asked for any detail, about the program that he was working on for DoD.

The AWS recruiter also wrote that Mr. Ubhi discussed compensation and other terms of his new employment on October 24, 2017.

h. Mr. Ubhi Accepts Employment with Amazon

~~(FOUO)~~ On October 25, 2017, AWS officially offered Mr. Ubhi the "Leader, Startup Program Management" position. The offer included a detailed description of his compensation and benefits,

(FOUO) including an annual salary of [REDACTED] and a signing bonus of [REDACTED]. Figure 1 shows an excerpt from the offer.

Figure 1. Excerpt of Amazon's Employment Offer to Mr. Ubhi.



receive any additional bonus installments after the date of termination, and you will be required to repay any unearned portion of the final bonus installment you received, on a prorated, daily basis.

Bonus payments are payable in accordance with the Company's standard payroll practice and subject to applicable withholding taxes. Leaves of absence may affect how and when a bonus is earned and paid, as detailed in the Company's policies at the time leave is taken.

Restricted Stock Unit Award

Subject to approval by the Board of Directors of Amazon.com, Inc., you will be granted a restricted stock unit award with respect to 570 shares of Amazon.com, Inc. common stock. This award will vest and convert into shares of common stock over four years, as follows, subject to your continued employment with the Company:

- [REDACTED] on the 15th day of the month in which you reach your first anniversary of employment,
- An additional [REDACTED] on the 15th day of the month in which you reach your second anniversary of employment, and
- An additional [REDACTED] every six months thereafter, until fully vested.

Your award will be documented by delivery to you of a Restricted Stock Unit Award Agreement specifying the terms and conditions of the award. You will be eligible for a restricted stock unit grant, based on your performance, in calendar year 2019. Ordinarily this process occurs each April.

Benefits

During the term of your employment, you will be entitled to 401(k), health and welfare, vacation, and other benefits as may be offered by the Company from time to time, subject to eligibility and other terms and conditions stated in the governing documents. Generally you are eligible to enroll in our 401(k) and major medical plans as of the date you start employment, with access to our enrollment system about three business days after your Start Date. Please refer to the enclosed documents for more information.

Background Check

This offer is contingent on the successful completion of a background check.

Customer Connection

You have the opportunity to participate in Amazon.com's Customer Connection ("C2") Program, which keeps our senior employees in direct contact with our customers. Under this program, you will work with our customer service associates for one day during your first six months of employment and on a regular basis thereafter. You'll also work at one of our fulfillment centers for three days during your first two years of employment. Please contact your Human Resources Generalist for more information.

On October 26, 2017, Mr. Ubhi and two DDS employees held another one-on-one contractor meeting with Google. The written record for this meeting stated that the team asked the eight standardized questions, which Google answered.

On October 27, 2017, Mr. Ubhi called the AWS recruiter to accept the AWS official job offer. He also responded by e-mail, stating, "I accept the offer."

According to the AWS recruiter's affidavit, Mr. Ubhi told the recruiter that he would notify DoD agency ethics officials that he had accepted AWS' employment offer and would submit his resignation to the DoD.

Mr. Ubhi's original start date for the AWS position was November 13, 2017, but this was delayed until November 27, 2017, so AWS could complete a background check.

On October 30, 2017, Mr. Ubhi told the DDS General Counsel that AWS had approached him about purchasing his start-up company "Tablehero." Mr. Ubhi told the DDS General Counsel that he was the founder of Tablehero and that he would soon be engaging in discussions with AWS to purchase his company. The DDS General Counsel told us that Mr. Ubhi never disclosed to her or anyone in the DoD that he had accepted an offer of employment with AWS. As described earlier in this report section, Amazon had previously declined Mr. Ubhi's Tablehero partnership in December 2016.

~~(FOUO SSI)~~ On October 30, 2017, the CESG published a DoD Cloud RFI on the Federal Business Opportunities (FedBizOpps) public website, seeking "industry input on how to best approach and structure" a solicitation for enterprise cloud services. The DoD requested that all responses be submitted by November 17, 2017. The CESG subsequently received [REDACTED] responses from [REDACTED] DoD officials who conducted or supervised the market research and drafted or approved the RFI told us that Mr. Ubhi helped with early drafts by contributing general questions that the DoD should ask potential cloud providers based on his industry knowledge, but he did not use Amazon-specific jargon or add Amazon-specific suggestions or questions in the RFI. According to these officials, the RFI drafting was a collaborative team effort that no one person could influence in any substantive way, and none of them said that Mr. Ubhi attempted to influence the RFI toward any particular potential cloud vendor.

Also on October 30, 2017, after learning of Mr. Ubhi's purported discussions with AWS about purchasing Tablehero, the DDS General Counsel told a SOCO attorney:

Hey we just found out one of our people [Mr. Ubhi] that we have working [on the Cloud Initiative] has told us that an outside company that he [Mr. Ubhi] owns might be getting acquired by Amazon and we're being very careful about it Can you talk to him [Mr. Ubhi]?

On October 31, 2017, Mr. Ubhi called the SOCO attorney and said that Amazon was interested in buying his company, Tablehero. The SOCO attorney told Mr. Ubhi to recuse himself from all DoD matters that could involve Amazon because negotiating the sale of Tablehero to Amazon was a financial conflict of interest. The SOCO attorney also told Mr. Ubhi to send an e-mail to the DDS Director stating, "I'm recused from taking any actions on things that would affect [all] Amazon" matters.

Later on October 31, 2017, Mr. Ubhi sent an e-mail to the DDS General Counsel, the DDS Director, and the DDS Deputy Director which stated:

As per guidance from SOCO ... and our in-house general counsel ... I am hereby recusing myself from the DDS's further involvement in facilitating SecDef and DSD's initiative to accelerate adoption of the cloud for the DoD enterprise, due to potential conflicts that may arise in connection to my personal involvement and investments. Particularly, Tablehero, a company I founded, may soon engage in further partnership discussions with Amazon, Inc., which also owns and operates one of the world's largest cloud service providers, Amazon Web Services.

On October 31, 2017, after receiving Mr. Ubhi's recusal e-mail, the DDS Director ordered one of the other DDS Google Drive administrators to remove Mr. Ubhi's access to all DDS data storage systems, including Google Drive and Slack that the DDS team used for the Cloud Initiative. Documents stored on the drive included notes from contractor meetings, a draft of the market research report, early business cost models that they scrapped, [and] draft RFI questions that were placed on the FedBizOpps public website.

The PCO told us that after becoming aware of Mr. Ubhi's October 31, 2017, recusal and the DDS Director's order regarding Google Drive and Google Slack, she began gathering information about Amazon's offer to purchase Mr. Ubhi's company, Tablehero, to determine the magnitude of Mr. Ubhi's potential conflict of interest and whether Mr. Ubhi's actions negatively impacted the integrity of the acquisition (JEDI Cloud procurement). The PCO initiated an "Assessment of No Impact Investigation" concerning Mr. Ubhi during the pre-solicitation phase of the JEDI Cloud procurement in accordance with FAR § 3.104-7.

On November 8, 2017, the DoD CIO and USD AT&L completed the last cloud focus session with the Military Services, DoD agencies, and technology industry leaders. Mr. Ubhi did not attend this cloud focus session.

On November 13, 2017, Mr. Ubhi submitted his resignation letter to DDS, with an effective date of November 24, 2017. He departed the DoD on the effective date and began working for AWS in his new position on November 27, 2017.

i. Final Market Research Report and Problem Statement

The complaints we received asserted that Mr. Ubhi made substantial early contributions to the Jedi Cloud procurement before his resignation, and shaped key early documents establishing requirements that allegedly gave Amazon an advantage in the acquisition. As described earlier in this section of the report, before his recusal and resignation, Mr. Ubhi participated in Cloud Initiative market research activities, including cloud focus sessions and one-on-one meetings with contractors. Mr. Ubhi also drafted a problem statement regarding the DoD's adoption of modern cloud computing technology.¹³⁷

The DDS Deputy Director told us that the market research report was "still in draft form" when Mr. Ubhi resigned and left the DoD. He said that during this 45-day period, when Mr. Ubhi worked on the Cloud Initiative, from September 13, 2017, to October 31, 2017, the procurement "was in its infancy," and that the DoD had not decided on the acquisition strategy. The Deputy Director said, "we hadn't decided how we were going to [establish the procurement] We hadn't decided the vehicle."

On March 27, 2018, the Cloud Computing Program Office (CCPO) completed and formalized the Market Research Report. The report summarized the DDS market research team's activities and findings that the DDS provided to the CESG, including information Mr. Ubhi had helped gather before his resignation. The CCPO used the information in the team's market research report to inform the JEDI Cloud acquisition strategy and Request for Proposals.

¹³⁷ The October 3, 2017, RFI used the terms "DoD Cloud RFI" and "DoD Enterprise Cloud Acquisition." Mr. Ubhi stopped working on the cloud adoption initiative the next day.

On April 11, 2018, the DoD CMO approved the JEDI Cloud Business Case Analysis (BCA), as described in Section II of this report. The JEDI Cloud BCA included a problem statement. According to the Defense Acquisition University (DAU), a BCA aids decision making by using a structured methodology to evaluate the expected benefits, risks, and financial and non-financial impacts of alternative solutions to a problem.

We asked the DDS Director how much of the information developed by Mr. Ubhi was used to create the final market research report and the BCA. The DDS Director told us that the CCPO did not use Mr. Ubhi's draft problem statement for the BCA. He said that after Mr. Ubhi's November 24, 2017, resignation, another DDS employee rewrote the problem statement because the employee did not think that Mr. Ubhi's October 3, 2017 draft document was good.

We interviewed the DDS employee who continued the draft problem statement and BCA after Mr. Ubhi departed the DoD. The employee told us that he wrote the BCA with guidance from the Deputy DDS Director and advice from the DDS General Counsel. He said that he rewrote Mr. Ubhi's draft problem statement "from scratch," because Mr. Ubhi's draft was general in nature, used broad language to describe the potential need for commercial cloud capabilities, and was not very useful to decision-makers in the procurement process.

On July 23, 2018, the PCO completed a report about Mr. Ubhi's involvement with the JEDI procurement. The report, entitled "JEDI Contracting Officer's Investigative Review Highlights," noted that Mr. Ubhi's previous employment with Amazon ended in January 2016 and that he was involved with JEDI Cloud market research activities from September 13, 2017, through October 31, 2017. The PCO's report concluded that Mr. Ubhi's regulatory impartiality restriction expired long before the JEDI Cloud procurement was initiated and his participation was limited to the early stages of market research activities. The report stated that Mr. Ubhi promptly recused himself during the early stages of the JEDI Cloud procurement and that his access to any JEDI Cloud materials was immediately revoked upon his recusal. The report also stated that Mr. Ubhi was no longer included in any JEDI Cloud related meetings or discussions. The report concluded that his connections to Amazon did not negatively impact the integrity of the JEDI Cloud acquisition. At the time she reported these findings, the PCO was not yet aware of Mr. Ubhi's negotiations with Amazon from April through August 2017 and September through October 2017, or that he accepted a job with Amazon on October 27, 2017. She did not learn these facts until February 2019, as we describe later in this report.

On August 6, 2018, Oracle filed a pre-award protest with the GAO. Among other assertions, Oracle alleged that the DoD's decision to award the JEDI Cloud to a single contractor was unlawful and irrational; the DoD structured the JEDI Cloud RFP to restrict competition; and the DoD failed to properly consider conflicts of interest among personnel involved in the procurement. On October 10, 2018, IBM filed a pre-award protest with the GAO and made assertions similar to those made by Oracle.

(FOUO-SSI) [REDACTED]

[REDACTED] Amazon's Organizational Conflict of Interest (OCI) Mitigation plan of action. Amazon's OCI Mitigation plan stated [REDACTED]

(FOUO SSI)

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On November 14, 2018, the GAO reviewed Oracle's assertions regarding a conflict of interest involving Mr. Ubhi and declined to consider the protest that the PCO's assessment of Mr. Ubhi's impact on the procurement's integrity was flawed. On December 6, 2018, Oracle filed a pre-award protest in the U.S. Court of Federal Claims.

On December 7, 2018, the PCO e-mailed Amazon's Corporate Counsel to determine whether Amazon sought to obtain procurement information from Mr. Ubhi. In that e-mail, the PCO requested Mr. Ubhi respond to these specific questions:

- 1) Do you recall being asked to sign a JEDI Cloud specific non-disclosure agreement (NDA);
- 2) Do you believe you signed a JEDI Cloud specific NDA;
- 3) If you believe you signed a JEDI Cloud specific NDA, do you consider these terms still binding;
- 4) At any point during your employment negotiations with AWS were you asked to provide non public information and/or documentation about the JEDI Cloud or DoD's cloud service needs; and
- 5) Prior to your employment with AWS, excluding the market research you conducted on behalf of the DoD, did anyone from AWS ask you for non public information and/or documentation about the JEDI Cloud requirement?

On December 11, 2018, the GAO dismissed IBM's protest without review because the matters were before the U.S. Court of Federal Claims.

On December 14, 2018, Amazon sent the DoD PCO a subsequent affidavit. In the affidavit, Mr. Ubhi responded to the PCO's questions by stating "nor did I, nor will I" provide Amazon with any procurement information. In the affidavit, Mr. Ubhi also wrote that he did not recall signing an NDA specific to JEDI Cloud. He also stated, "I understand that I was (and remain) prohibited from disclosing non-public information related to JEDI Cloud gained while employed by DDS." He further stated that even though he did not recall signing a JEDI Cloud NDA, he did not disclose any information to Amazon. He stated that he did not recall signing or being asked to sign an NDA, and that he understood he was and remains prohibited from disclosing nonpublic information relating to JEDI Cloud gained while employed by DDS. Mr. Ubhi's affidavit further stated that Amazon did not request any non-public information related to JEDI Cloud or DoD's cloud service needs.

DoD PCO Conducts Reassessment

In a February 12, 2019, letter from Amazon to the DoD PCO, Amazon notified the PCO that Amazon had learned about Mr. Ubhi's recusal letter to the DoD when it was included in Oracle's pre-

¹³⁸ (FOUO SSI)

award bid protest filed on December 6, 2018 with the Court of Federal Claims. Amazon wrote that it wanted to clarify that Amazon had never offered to purchase Tablehero from Mr. Ubhi and that he had misrepresented to the DoD his reasons for disqualifying himself from JEDI Cloud on October 31, 2017. Amazon wrote in its letter:

AWS does not know why Mr. Ubhi's October 2017 [JEDI Cloud procurement] recusal letter references 'further partnership discussions' with Amazon. Mr. Ubhi might have been considering trying to reopen discussions with Amazon Restaurants at that time, but we have no evidence that anyone at Amazon considered or discussed with Mr. Ubhi the possibility of a partnership with Tablehero at any time after December 2016 Mr. Ubhi did have discussions with his former supervisor at AWS in late September 2017 about the possibility of rejoining AWS in a commercial startup role unrelated to AWS's government business. Notably, AWS's commercial organization is a separate and distinct organization from the AWS team that pursues and performs government contracts (AWS World Wide Public Sector) Mr. Ubhi specifically represented to AWS that he had "confirmed by consulting with his employer's [DoD] ethics officer" that he was permitted to have employment discussions with AWS ... since joining AWS on November 27, 2017, Mr. Ubhi has played no role in AWS's preparation of its JEDI Cloud proposal and has not provided AWS with any non-public information regarding JEDI.

After receiving Amazon's letter with this new information that she did not have during her first investigation of the procurement's integrity, the PCO reconsidered her previous determination regarding Mr. Ubhi's JEDI-related actions. She initiated a Procurement Integrity Act (PIA) reinvestigation to determine if the new information about Mr. Ubhi's actions impacted the integrity of the JEDI Cloud procurement.

(FOUO-SSI) On February 14, 2019, the PCO [REDACTED]

(FOUO-SSI) In addition, the PCO interviewed [REDACTED]

On April 9, 2019, after receiving and reviewing the requested documents, the PCO completed a report describing her investigation. The report concluded that Mr. Ubhi's AWS employment offer, including bonuses and options, was relatively standard for that industry and did not reflect any special compensation. The PCO reported that she found no evidence that Amazon provided an employment offer or any special employment compensation to Mr. Ubhi for providing any non-public or

competitively useful information. The PCO concluded that Mr. Ubhi's participation in the early stages of the JEDI Cloud procurement had no substantive impact on the procurement decision, that other DDS personnel had rewritten his draft products, and that Mr. Ubhi did not introduce any bias toward Amazon into the procurement. Finally, the PCO wrote, "I find there is no impact on the JEDI Cloud" acquisition.

Also on April 9, 2019, the PCO completed the DoD OCI Determination following the review of Amazon's OCI Mitigation plan. The PCO wrote that none of the information led her to conclude that Amazon had been rendered an unfair competitive advantage in the JEDI Cloud RFP and that no OCI existed.

We interviewed the SOCO Attorney, DDS General Counsel, WHS AGC 1, DDS Director, and DDS Deputy Director regarding Mr. Ubhi's employment discussions with Amazon from April 2017 through August 7, 2017, and September through October 2017. These witnesses told us that they were not aware that Mr. Ubhi had applied for a position with Amazon until after he had resigned from DoD and started working at AWS. The SOCO Attorney told us that Mr. Ubhi never said anything to him about Amazon's employment offer. The DDS General Counsel told us, "it was a shock to all of us" that Mr. Ubhi had been seeking and was offered employment with Amazon. The DDS General Counsel said that, based on Mr. Ubhi's employment contacts with Amazon from April through August 2017, he should not have been involved with "JEDI since day one [September 13, 2017]." The DDS Director told us that "[Mr. Ubhi] lied to me as to why he left I actually thought that [Mr. Ubhi's] company [Tablehero] had been bought by Amazon Nobody had any idea" that Mr. Ubhi did not sell his company to Amazon." The DDS Deputy Director told us he only learned that Amazon did not buy Mr. Ubhi's company, Tablehero, from documents provided to the U.S. Court of Federal Claims and not from Mr. Ubhi.

On July 19, 2019, the U.S. Court of Federal Claims entered a judgment in favor of the DoD. The opinion stated that the PCO's determinations that conflicts of interest reported did not impact the procurement, were rational and consistent with the FAR, and that the PCO's work was thorough and even-handed.

From September 4, 2019, through September 17, 2019, the DoD OIG made several attempts to schedule an interview with Mr. Ubhi. On September 17, 2019, Mr. Ubhi declined to be interviewed on advice from his attorney.

Criminal Declination

The DoD OIG referred evidence of Mr. Ubhi's false statements to the United States Attorney for the Eastern District of Virginia (EDVA), as possible false official statements in violation of Title 18, U.S.C. § 1001, "Statements or entries generally." On November 21, 2019, the EDVA declined prosecution. When asked about the reasons for the declination, it advised that it does not comment publicly on prosecutorial decisions.

j. OIG Conclusions regarding Mr. Ubhi

We concluded that Mr. Ubhi committed ethical violations when he lied, or failed to disclose information, on at least three occasions, in an effort to conceal relevant information from, or mislead, his Amazon and DoD supervisors and DoD SOCO officials. First, he lied when he told Amazon that he

had disclosed his employment negotiations to DoD SOCO officials and received an ethics opinion that there were no Government restrictions on his re-employment with Amazon. Second, he lied when he told the DDS General Counsel that the reason for his recusal from the DoD Cloud initiative was that he had been discussing with Amazon the purchase of his online company, Tablehero. In fact, he knew that Amazon already had rejected purchasing Tablehero in December 2016 and he had no discussions with Amazon about Tablehero after this rejection. Third, he repeated to the DoD SOCO that same lie that he had told to DDS General Counsel about his recusal reason.

In addition to these three lies, he failed to disclose to DoD officials that he had restarted employment negotiations with Amazon in September 2017, and he continued to work on some initial JEDI tasks while he negotiated and eventually accepted a job with Amazon on October 27, 2017.

Mr. Ubhi's false statements and his failure to disclose his employment negotiations and job acceptance with Amazon violated the FAR and the JER. It also created the appearance of a conflict of interest in violation of the FAR and JER when the truth was later disclosed that he had worked on JEDI Cloud initiative market research while negotiating for and accepting re-employment with Amazon, a company that Mr. Ubhi knew or should have known would compete for any future contract for DoD cloud services.

Mr. Ubhi's False Statements

Regarding Mr. Ubhi's first false statement, as detailed above, we determined that on September 22, 2017, Mr. Ubhi committed ethical violations when he restarted employment negotiations with Amazon while he was engaged in the early stages of the JEDI Cloud Initiative, without disclosing this to his supervisors or other DoD officials. On October 20, and again on October 24, 2017, Mr. Ubhi falsely stated to an Amazon recruiter in his official application documents and in an e-mail, that he had already disclosed his employment discussions with Amazon to a DoD ethics official and received the DoD ethics official's permission to continue discussions and accept an offer of employment with no restrictions on Mr. Ubhi's post-Government employment. Mr. Ubhi knew this was a lie. We found no evidence that Mr. Ubhi ever disclosed to any DoD officials that Amazon was recruiting him to return to employment, that he was negotiating for a particular position at Amazon, or that he eventually accepted a job with Amazon.

Regarding Mr. Ubhi's second and third false statements to DoD officials, on October 30 and 31, 2017, Mr. Ubhi lied to the DDS General Counsel, and separately to a DoD SOCO attorney, about the financial conflict of interest in Amazon for which he was recusing himself from the Cloud Initiative. Mr. Ubhi stated to both of these DoD officials that he "would soon" negotiate with Amazon regarding the sale of his company Tablehero. In fact, Amazon had declined to purchase Tablehero in December 2016, which Mr. Ubhi knew.

In addition to the three false statements, Mr. Ubhi concealed from the DDS General Counsel and the DoD SOCO attorney that the true reason for his recusal was that he had been pursuing re-employment with Amazon since September 22, 2017, and that by October 27, 2017, he had negotiated for and accepted employment with Amazon.

We believe that his false statements, in addition to constituting ethical violations, also violated Title 18, United States Code, Section 1001, which makes it a crime for a person, in any matter within the

jurisdiction of the executive branch, to knowingly and willfully make a materially false, fictitious or fraudulent statement. Mr. Ubhi knowingly made false statements regarding his employment with the DoD and his financial conflict of interest.

Mr. Ubhi knew each of the statements to be false when he made them, and he benefitted financially from them by securing employment with Amazon and deceiving his DoD supervisors, while he continued to work on projects that his conflict of interest would have prohibited if he had been truthful. Mr. Ubhi's intentional deceit contributed to raising concerns about the integrity of the JEDI Cloud procurement, and also contributed to the DoD expending significant resources in protests and litigation about the procurement.

We therefore presented our findings regarding Mr. Ubhi to the Assistant United States Attorney for the Eastern District of Virginia for consideration as a criminal matter. On November 21, 2019, the EDVA declined prosecution. When asked about the reasons for the declination, it advised that it does not comment publicly on prosecutorial decisions.

Mr. Ubhi's Failure to Report a Financial Conflict of Interest

We also concluded that Mr. Ubhi's actions violated ethical standards when he failed to report a financial interest to the DoD that he was required to report. Mr. Ubhi began discussions with his former Amazon supervisor about the possibility of returning to employment with Amazon as the Europe, Middle East, and Africa Startup Team Lead. Mr. Ubhi interviewed for this position in July 2017. Also, in August 2017, he presented to an Amazon vice president his idea for a new startup business related to healthcare. These discussions created a prospective financial interest in Amazon for Mr. Ubhi, which prohibited him from participating personally and substantially in any particular matter that would have had a direct and predictable effect on Amazon. Yet, Mr. Ubhi never reported any of his Amazon employment negotiations to DoD officials. Instead, he later recused from matters involving Amazon but lied about the real conflict of interest that necessitated his recusal. He claimed it was because Amazon was negotiating to buy his company Tablehero, which he knew was not true. His employment negotiations and job acceptance were the real financial conflict of interest, but he never disclosed that to DoD officials. The DoD learned of Mr. Ubhi's actions when Amazon notified the DoD in February 2019, as part of ongoing litigation related to the procurement.

We determined that Mr. Ubhi was required under applicable standards to notify his DDS supervisor or a DoD ethics official about his financial interest in Amazon during the April through August 2017 and September through October 2017 periods, when he was seeking employment with Amazon, and he did not. Such notification would have allowed DoD ethics officials and his supervisors to evaluate whether his financial interest in Amazon would prohibit him from the work he was performing related to the Cloud initiative. Had Mr. Ubhi notified DoD officials of his financial interest in Amazon throughout his employment negotiations, the DoD could have disqualified him from his early participation in the Cloud initiative and avoided an appearance of a conflict of interest, as described below. Instead, he intentionally concealed his financial interest in Amazon and continued working on the early stage of the Cloud initiative.

Mr. Ubhi's Effect on JEDI Cloud Procurement Integrity

With regard to Mr. Ubhi's impact on the JEDI Cloud procurement; however, we concluded that

Mr. Ubhi's involvement and actions did not favor Amazon or have an impact on the eventual JEDI Cloud contract award that occurred 2 years after he resigned from the DoD. Mr. Ubhi began work on the cloud initiative on September 13, 2017. His financial interest in Amazon, created by his re-employment negotiations, started on September 22, 2017. Mr. Ubhi stopped working on the Cloud Initiative on October 31, 2017.

We concluded that the cloud procurement effort had not progressed far enough to define it as a particular matter involving specific parties under the FAR. According to FAR 3.104-1, particular matters include a contract, and as of October 31, 2017, there was no contract, solicitation for contract proposals, acquisition strategy, business case, or market research report, although two of these were in early draft form.

Specifically, FAR 3.104-1 states that participating personally and substantially in a Federal agency procurement means "active and significant involvement of an official in (1) drafting, reviewing, or approving the specification or statement of work for the procurement, (2) preparing or developing the solicitation, (3) evaluating bids or proposals, or selecting a source, (4) negotiating price or terms and conditions of the contract, or (5) reviewing and approving the award of the contract." We found that Mr. Ubhi resigned from the DoD before any of those Cloud Initiative activities began.

Not being aware of Mr. Ubhi's negotiations with Amazon, the DDS Director permitted Mr. Ubhi to work on some initial JEDI tasks that would subsequently support the completion of some of the JEDI contract. For example, Mr. Ubhi participated in market research activities, including cloud focus sessions and one-on-one meetings with contractors. Mr. Ubhi's work would later support the development of solicitation requirements because he gathered information from the DoD Components, think tanks, consultants, and contractors, including AWS and its competitors, about their experiences in cloud computing, cloud service offerings, approaches to security, and contractor capabilities, strengths, and weaknesses. As discussed in Section II of this report, these activities were designed to inform the DoD on its subsequent efforts to develop enterprise cloud services solicitation requirements and acquisition strategy.

In addition to market research, Mr. Ubhi drafted a statement of the problem to be solved by the DoD acquiring modern enterprise cloud services. We recognize that how a problem is defined can significantly influence the development and analysis of alternative solutions, acquisition strategy, and solicitation requirements. However, the language in Mr. Ubhi's draft problem statement was general in nature and did not mention any vendor names or any vendor's proprietary cloud capabilities. Further, the problem statement that was approved after Mr. Ubhi's resignation and that appeared in the April 11, 2018, Business Case Analysis used different language than he used in his draft. DDS witnesses told us they rewrote Mr. Ubhi's general early draft documents after he resigned because they did not think his draft work was good.

We concluded that Mr. Ubhi's participation in cloud focus sessions and one-on-one meetings with cloud services contractors after September 22, 2019, led to the appearance of a conflict of interest, in violation of the JER. His actions were also inconsistent with FAR 3.101, which states, in part, that Government business shall be conducted in a manner above reproach, charges employees to strictly avoid the appearance of a conflict of interest in Government-contractor relationships, and requires employees to conduct themselves such that they would have no reluctance to make a full public disclosure of their actions. Rather than avoiding the appearance of a conflict of interest as required,

Mr. Ubhi acted on several occasions to hide his financial conflict of interest by not disclosing it to his supervisors and lying about it to various DoD and Amazon officials.

However, we determined that Mr. Ubhi did not influence or implement decisions to adopt a single contract award strategy to Amazon's advantage, as alleged. Mr. Ubhi did not supervise anyone in DDS, and at the beginning of the DoD Cloud Initiative, he was one of at least four DDS employees assigned to a team tasked with market research prior to the development or issuance of a solicitation for the eventual JEDI Cloud procurement. He also drafted a problem statement that was later discarded after his resignation because his draft was not good, according to DDS witnesses who rewrote or reviewed it. Mr. Ubhi's early market research work did not contribute substantially to the draft RFP requirements, business case, and acquisition strategy development that other DoD personnel developed after Mr. Ubhi's October 31, 2017, recusal and November 24, 2017, resignation.

We also found, as detailed in Section II of this report, that DoD officials far above Mr. Ubhi's level, including Deputy Secretary Shanahan, made key decisions on the JEDI Cloud procurement based on information that no longer contained Mr. Ubhi's original early draft work. In particular, Under Secretary Lord approved the JEDI Cloud acquisition strategy and authorized the release of an RFP that called for a single award. We found no evidence that Mr. Ubhi interacted with or had any influence on Under Secretary Lord. In Section III of this report we concluded that the process the DoD used to make the single award decision was consistent with applicable laws and standards. We found no evidence that Mr. Ubhi influenced the decision-makers at any stage of the JEDI Cloud procurement, and that all key decisions in the procurement process were made months or years after Mr. Ubhi's resignation. We found no evidence that Mr. Ubhi could or did influence those decisions.

In addition, when Mr. Ubhi's resignation became effective on November 24, 2017, the DoD had not yet collected contractor bid and proposal information or generated Government source selection information for cloud acquisition. To protect the integrity of Federal agency procurements, FAR 3.104-3 prohibits employees from improperly disclosing these two types of procurement information.

Mr. Ubhi was in a position to disclose some non-public information to AWS or others. For example, Mr. Ubhi created or had access to notes from the DDS market research team's one-on-one meetings with cloud service providers, during which potential vendors shared their recommendations for how the DoD could best secure its sensitive data in a cloud environment and answered the DDS team's questions. The JER prohibits employees from knowingly disclosing non-public information and allowing its use to further the interests of the employee or someone else's interests, such as Amazon's. Amazon later denied, in affidavits provided to the PCO and the U.S. Court of Federal Claims, and in Amazon's Conflict of Interest Mitigation plan, that Mr. Ubhi disclosed to Amazon, or Amazon received from him, non-public information.

In addition, the PCO's procurement integrity investigation found, on April 9, 2019, that because of Mr. Ubhi's limited early involvement conducting market research, none of the information he could have disclosed to Amazon would have been proprietary or competitively useful. Because we could not interview Mr. Ubhi and ask him under oath about alleged non-public information he could have disclosed to Amazon after he resigned from the DoD, our determination on this issue does not include his sworn testimony about his actions. However, we interviewed a significantly larger number of witnesses than the PCO interviewed, and we reviewed documents and e-mails the PCO did not have access to in her procurement integrity investigation. We found no evidence in our investigation that

conflicted with the PCO's determination regarding Mr. Ubhi and disclosure of non-public information to Amazon.

Finally, we noted that the GAO did not sustain Oracle's protest that the DoD failed to properly consider potential conflicts of interest which related to Mr. Ubhi. We also noted the U.S. Court of Federal Claims opinion that (1) the PCO's determinations that conflicts of interest reported to her did not impact the procurement were rational and consistent with the FAR, and (2) the persons whom Oracle asserted were conflicted [Mr. Ubhi among them], were "bit players" whose involvement "did not taint" the work of those who controlled the direction of the procurement. We agree with the PCO's, GAO's, and U.S. Court of Federal Claims' determinations.

In sum, we concluded that Mr. Ubhi engaged in unethical conduct when he made three false statements and failed to properly report financial interests in Amazon. These actions, combined with his involvement in early Cloud Initiative activities in September and October 2017, also created the appearance of violation of laws and ethical standards. However, his early involvement in the Cloud Initiative was not substantial and did not provide any advantage to his prospective employer, Amazon, in the JEDI Cloud contract competition, which was decided 2 years after Mr. Ubhi's resignation from the DoD. Although Mr. Ubhi's Cloud actions from September through October 2017 violated the JER and the FAR, his minimal and limited contributions were largely discarded and did not affect the conduct or outcome of the JEDI Cloud procurement.

Mr. Ubhi left the DoD on November 24, 2017, and disciplinary action regarding his misconduct is not available to the DoD. However, we recommend that the DoD Chief Information Officer incorporate a record of Mr. Ubhi's misconduct into his official personnel file. We also recommend that the DoD Chief Information Officer notify the DoD Consolidated Adjudications Facility of Mr. Ubhi's misconduct with regard to any security clearance he may hold or seek in the future.

2. Mr. Victor Gavin

We received complaints which alleged that former Navy Deputy Assistant Secretary Victor Gavin improperly participated in a JEDI Cloud acquisition strategy meeting in April 2018, although he had previously recused himself in January 2018 from matters involving Amazon Web Services (AWS) because of his exploration of employment opportunities with AWS. According to the complaints, Mr. Gavin's attendance at the April 2018 JEDI Cloud acquisition strategy meeting while he was seeking AWS employment created a conflict of interest.

a. Background

Mr. Gavin served as the Deputy Assistant Secretary of the Navy for Command, Control, Communications, Computers, Intelligence (C4I), Information Operations and Space (hereafter "DASN (C4I)") from November 2016 through June 18, 2018. As DASN(C4I), Mr. Gavin reported to the Assistant Secretary of the Navy for Research, Development, and Acquisition (ASN[RD&A]). In that role he was the primary Department of the Navy advisor for the acquisition of C4I systems, enterprise information technology (IT), business systems, space systems, cybersecurity, and spectrum management. Mr. Gavin provided acquisition program guidance and oversight to the Program Executive Officers for C4I, Space, and Enterprise Information Systems, and their associated program managers for assigned portfolio programs; however, he was not directly involved in managing Navy acquisition programs.

Prior to serving as the DASN (C4I), Mr. Gavin held various Navy acquisition program management positions, culminating as the Navy's Program Executive Officer for Enterprise Information Systems.

Table 3 lists a chronology of significant events related to Mr. Gavin, the JEDI Cloud procurement, and his post-government employment with AWS.

Table 3. Chronology of Significant Events related to Mr. Gavin.

Date	Event
Nov. 2016	Mr. Gavin becomes the Deputy Assistant Secretary of the Navy for Command, Control, Communications, Computers, Intelligence.
Summer – Fall 2017	Mr. Gavin considers retiring from the DoD and consults a Navy ethics counsel on industry employment opportunities.
Sep. 26, 2017	Mr. Gavin's supervisor nominates him to represent the Navy in the Cloud Executive Steering Group (CESG) that Deputy Secretary Shanahan created on September 13, 2017.
Oct. 5, 2017	Mr. Gavin attends his first JEDI Cloud meeting, a "Cloud Focus Group" meeting, at which he shares the Navy's lessons learned with cloud computing.
Jan. 11, 2018	Mr. Gavin disqualifies himself from participating in matters related to Amazon because he is "exploring" employment opportunities with the company.
Jan. 15, 2018	Mr. Gavin interviews with Amazon Web Services (AWS).
Mar. 26, 2018	Mr. Gavin consults a Navy ethics counsel concerning employment prospects with AWS, and gives counsel a copy of a position description AWS discussed with him. He receives advice that the law does not prohibit him from accepting the position, but could impact his ability to lobby for new business once in the position.
Mar. 29, 2018	Mr. Gavin receives a verbal employment offer from AWS.
Apr. 2, 2018	Mr. Gavin receives and accepts a written employment offer from AWS.
Apr. 5, 2018	Mr. Gavin receives a same-day invitation to a JEDI meeting, to review the JEDI Cloud acquisition strategy. This is Mr. Gavin's second and final JEDI Cloud meeting. Mr. Gavin receives a draft acquisition strategy and consults a Navy ethics advisor, who tells Mr. Gavin that despite his recusal, Mr. Gavin can attend the meeting because the acquisition strategy is not a particular matter involving specific parties.
Apr. 5, 2018	Mr. Gavin attends the JEDI Cloud Acquisition Strategy review meeting and speaks against the recommended single award strategy and in favor of awarding multiple JEDI Cloud contracts.
Jun. 1, 2018	Mr. Gavin retires from the DoD.
Jun. 18, 2018	Mr. Gavin begins working for Amazon as the AWS Head of Federal Technology Vision and Business Development.

The following sections discuss these events in more detail.

b. Events Leading to Mr. Gavin's Disqualification From Amazon-Related Matters

Mr. Gavin told us that during the "fall or even summer" of 2017, he began wondering about retiring from the DoD. He said he "always wondered what life would be like in private industry but wasn't sure if I would like it or fit in. I wanted to get an understanding of life in the private sector but wasn't sure I wanted to pursue it."

Mr. Gavin told us that he called a Navy ethics advisor for advice “on how to deal with retirement and conversations with industry.” According to Mr. Gavin, the Navy ethics advisor told him “to feel free to talk,” and advised him that “once you start getting specific about jobs and money, and things of that nature you need to recuse yourself [from particular matters that involve the prospective employer]. But it's okay to say “Hey, what would it be like to work” for a specific company or within industry.

Mr. Gavin told us that based on the Navy ethics advisor’s advice that he was “free to talk” to prospective employers in “discovery mode,” he:

had conversations with many companies between July 2017 and my recusal letter in January [2018]. These companies include AWS, Microsoft, Oracle, Lockheed Martin, Metron, etc. The goal was to understand "a day in the life" in the private sector and help me determine if I would retire or spend the next several years as a government employee. I was never looking for a job with any of these discussions.

The ethics advisor Mr. Gavin consulted oversaw the ethics program for the Office of the Assistant Secretary of the Navy for Research, Development & Acquisition (OASN[RD&A]), which was the DASN(C4I)’s parent organization.¹³⁹ We asked this ethics advisor about Mr. Gavin’s phone call to him seeking ethical advice on discussions with companies. The ethics advisor said, “I don’t have any recollection of that, which isn’t to say that he did not do it,” and “it would not surprise me if he did [call].” The ethics advisor explained that when “senior executives were thinking about their futures they would just come and ask questions about what law might apply to them.” He said it would have been normal for him to give Mr. Gavin general information about the laws that could apply to him, and to caution him that “if he wanted to interview or negotiate for employment” with a specific company, he had to recuse himself from working on Government matters that involved that company.

On September 26, 2017, Ms. Allison Stiller, Principal Civilian Deputy Assistant Secretary of the Navy for Research, Development, and Acquisition, nominated Mr. Gavin to represent the Navy in the CESG that Deputy Secretary Shanahan had established two weeks earlier. This was Mr. Gavin’s first involvement with the JEDI Cloud procurement, which at the time was known as the “cloud adoption initiative.” In her e-mail to Under Secretary of Defense Lord nominating Mr. Gavin, Ms. Stiller wrote:

I understand that you have tasked your team with setting up a Cloud Executive Steering Group (CESG) with reps at the SES level. I would like to nominate Victor Gavin, our DASN C41/Space. I believe you met Vic[tor] this week as he has responsibility for all of our IT system acquisition. He has been leading the charge for Navy migration to the cloud and I think he would be a great asset to the CESG.

Mr. Gavin was never appointed formally as a CESG member. According to the former DDS General Counsel, Deputy Secretary Shanahan’s memo directing establishment of the CESG identified the core CESG members as OSD officials. No Military Service representatives were appointed to the CESG.

¹³⁹ For clarity, we refer to this ethics advisor as the ASN(RD&A) Ethics Advisor, to distinguish this person from the DASN(C4I) Ethics Advisor, who was assigned to support Mr. Gavin’s organization, DASN(C4I).

Mr. Gavin was invited to attend to brief the CESG on the Navy's experiences with cloud computing. This meeting took place on October 5, 2017. This meeting was part of the CESG's research into the results of existing cloud migration efforts throughout the DoD. According to Mr. Gavin, as DASN he had talked to "all the major [cloud] vendors," including Microsoft, IBM, Oracle, and Amazon because they were all suppliers of Navy C4I and IT systems. He told the CESG about the Navy's experiences and lessons learned with cloud services, and about "strengths and weaknesses in cloud vendors' space." When we asked him what he said specifically about Amazon to CESG members, Mr. Gavin responded that he told the CESG "what the Amazon cloud does," how the Navy used Amazon's cloud services, and that Amazon's strengths were its large size and its relationships with other Federal agencies. Mr. Gavin said the CESG also wanted to know if the Navy would place orders against the JEDI ID/IQ contract after it was awarded. He told the CESG "Yes," and told us that the Navy slowed down its cloud initiatives in anticipation of using the future JEDI Cloud contract.

c. Mr. Gavin Accepts a Job with AWS

Mr. Gavin told us that during his discussion about private sector employment with a number of companies, "AWS offered me the opportunity to interview to determine my fit" for AWS. He said he agreed to interview, and that this "triggered my recusal" from involvement in matters related to AWS

Mr. Gavin stated that he did not remember the exact date that AWS first contacted him and invited him to interview. He added that the interview was not for any particular position with AWS.

Mr. Gavin sent a letter, dated January 11, 2018, to James F. Geurts, Assistant Secretary of the Navy for Research, Development and Acquisition, disqualifying himself from participating in matters related to Amazon. In his letter, Mr. Gavin wrote:

I am exploring employment opportunities with Amazon Web Services [AWS]. I do not work with Amazon Web Services in a technical capacity while supporting ASN (RD&A) and do not currently participate personally and substantially in any particular matters which would have a direct effect on Amazon Web Services' financial interests. To avoid any possibility of a conflict of interest and to permit an orderly transition of responsibilities, I request to be excluded from, and relieved of, all matters and responsibilities regarding the financial interests of Amazon Web Services effective immediately.

On January 14, 2018, Mr. Geurts replied to Mr. Gavin by e-mail, "Victor, Got it – thanks."

On, January 15, 2018, Mr. Gavin interviewed with AWS. He told us the interview was to determine his suitability for employment with the company and not for any specific position at that time.

Mr. Gavin said that in late January 2018, he received an e-mail in which AWS expressed its belief that he was a good fit, but had not made any decisions. Mr. Gavin said he heard nothing from AWS until late March, when AWS sent him a description for the job of Head, Federal Technology Vision and Business Development, leading AWS projects related to "government acquisition, enterprise systems migration, security and compliance, and technical and business strategy support for our Federal systems integrators."

On March 26, 2018, Mr. Gavin sent the job description to the ASN(RD&A) Ethics Advisor and asked for advice. Mr. Gavin wrote:

Attached is a job description that I'm interested in. I'm interested in your thoughts on the job's compliance with the new NDAA section 1045. The job works with other Federal agencies and there is no work with DoD. To me it sounds clear but I need to get a legal read from you.

The ASN(RD&A) Ethics Advisor explained to Mr. Gavin the specifics of accepting the position and how new post-Government employment provisions in the 2018 NDAA Section 1045 and in 18 U.S.C. 207 would apply to him.¹⁴⁰ He wrote to Mr. Gavin:

I do not believe section 1045 would prohibit you from accepting the described position with Amazon, but it could impact your ability to lobby for new business development, which appears to be one of the responsibilities of the position.

The Ethics Advisor also told Mr. Gavin that as an Amazon employee he could do behind-the-scenes work, such as suggest names of DoD officials for other Amazon employees to contact, but that Mr. Gavin could not contact the DoD officials himself during his cooling-off period. Mr. Gavin told us that he understood from conversations with the Ethics Advisor that his cooling-off period would be for 2 years.

Mr. Gavin told us that AWS made a verbal job offer to him on March 29, 2018, and a written job offer on April 2, 2018. Mr. Gavin said he accepted the offer on April 2, 2018.

It is not clear when Mr. Gavin informed DoD officials that he had accepted the job with AWS. Mr. Gavin told us that "my acceptance eventually became common knowledge, [but] I do not recall when or who I told."

The ASN(RD&A) Ethics Advisor told us that when he retired on April 30, 2018, he did not know that Mr. Gavin had accepted the job with AWS earlier that month.

We found no evidence that Mr. Gavin participated in any JEDI-related matters between the October 2017 "Cloud Focus Session" and Mr. Gavin's April 2, 2018 acceptance of the job offer from AWS.

d. Mr. Gavin Attends a Meeting on the JEDI Cloud Acquisition Strategy

On April 5, 2018, Mr. Kevin Fahey, Assistant Secretary of Defense for Acquisition, invited senior officials from OUSD(A&S), DoD OGC, DoD OCIO, and the Military Services to attend a JEDI Cloud meeting that afternoon. Mr. Fahey invited Mr. Gavin to represent the Navy at the meeting. The e-mail invitation included Mr. Gavin and identified the meeting's subject as "JEDI Cloud Acquisition Strategy," and the meeting's purpose as "JEDI Cloud Acquisition Strategy Murder Board."

¹⁴⁰ Section 1045 of the National Defense Authorization Act for FY 2018 barred former DoD senior officials from engaging in lobbying activities with certain current senior DoD officials for a 1- or 2-year period, depending on the grade of the senior official.

Mr. Gavin told us that when he received the e-mail invitation, he was concerned about whether it was appropriate for him to attend the meeting because of his recusal from AWS matters. He said he therefore sought ethics advice. He also said he considered sending someone else to the meeting in his place. However, he said he thought it was important that the Navy send an SES-level attendee, but there were no SES members on his staff to send in his place.

We determined that at 7:55 a.m. on April 5, 2018, the day of the meeting, Mr. Gavin's Chief of Staff wrote an e-mail on Mr. Gavin's behalf to the DASN(C4I) Ethics Advisor.¹⁴¹ The Chief of Staff wrote:

Mr. Gavin would like to know if it is a conflict of interest for him to attend the Subject [JEDI Cloud Acquisition Strategy] meeting today. The [Military] Services will be discussing the JEDI cloud contract's acquisition strategy. Companies like Amazon and Microsoft (which boss [Mr. Gavin] might work with) will likely bid on this contract.

At 8:35 a.m. on the same date, the DASN(C4I) Ethics Advisor replied to Mr. Gavin's Chief of Staff:

No issues with Mr. Gavin attending this particular meeting. At this point, the matter does not involve Amazon, as it's only at the stage where Amazon/Microsoft is a likely bidder on the contract (this can of course change down the line).

The Chief of Staff forwarded the DASN(C4I) Ethics Advisor's response to Mr. Gavin, and wrote, "You are good to go [to the JEDI Cloud Acquisition Strategy meeting]."

We asked Mr. Gavin if his Chief of Staff knew at that time of this e-mail exchange that he [Mr. Gavin] had accepted a job with AWS. Mr. Gavin said he was "not sure when we had a specific conversation about my acceptance of a position," but said that his Chief of Staff "knew that I had recused from all matters dealing with AWS." As noted above, Mr. Gavin told us that while his acceptance of the AWS job eventually became common knowledge, he did not recall who he told or when. He told us that he did not "see an urgency to do so given that I had recused myself."

Later that morning, Ms. Jane Rathbun, Deputy Director, Deputy Assistant Secretary of Defense for Defense Business Systems, sent an e-mail to Mr. Gavin that stated, "If you are wondering how you were invited to this meeting I am the culprit." Mr. Gavin's three-word reply to Ms. Rathbun was, "Thanks, I think?"

Mr. Gavin attended the April 5, 2018, meeting on the draft JEDI Cloud Acquisition Strategy. He told us that his "sole reason for me attending these things [JEDI Cloud meetings] is to provide Navy lessons learned." Mr. Gavin described the meeting to us:

There was a whole lot of I'll call it Cloud 101 discussions. There's a whole lot of discussion on whether it was putting things in one data center, people not

¹⁴¹ We use the term DASN(C4I) Ethics Advisor to describe the attorney assigned to provide ethics advice to Mr. Gavin's organization, the ODASN(C4I). We distinguish this advisor from the ASN(RD&A) Ethics Advisor, who oversaw the ethics program within the OASN(RD&A) and who advised Mr. Gavin on his post-Government employment negotiations.

understanding the business model, people not understanding I'll say cloud basics in that meeting. And the group that was leading the meeting did their best to explain what was going on. So, I think from that standpoint that was the vast majority of that discussion there.

Mr. Gavin told us that he received a draft DoD Acquisition Strategy document to review prior to the April 5, 2018, CESG meeting. He told us that his input during the meeting concerned "the multi-cloud versus single cloud – multi award versus single award" debate. Mr. Gavin said he "did not like the idea of doing a single-award." Mr. Gavin also told us that during the meeting the other attendees acknowledged his concerns, the DDS members explained their rationale for a single award, and Mr. Gavin explained to the group his rationale for a multiple award, "and that was it."

We interviewed three DDS officials and one WHS OGC official who also attended the meeting and three of the four officials said they remembered that Mr. Gavin was there. One did not remember Mr. Gavin attending. According to the witnesses, none of them were aware during the meeting that Mr. Gavin had disqualified himself from participating in matters involving AWS. The three who remembered Mr. Gavin attending told us that Mr. Gavin's only input during the meeting was to speak against a single-award approach to the acquisition strategy, and to speak for a multiple-award approach. According to these witnesses, Mr. Gavin did not say anything about Amazon or any other potential JEDI Cloud contract competitor, and he did not provide any other input during the meeting. They added that, to their knowledge, Mr. Gavin did not have any involvement in the JEDI Cloud procurement between this meeting and his resignation from DoD.

We also interviewed the JEDI Cloud PCO, who said that she later investigated the matter of Mr. Gavin's attendance at the April 5, 2018, meeting. The PCO stated she did not attend the meeting, and at that time she was not aware of Mr. Gavin's disqualification from particular matters related to Amazon. In her investigation, the PCO concluded that by attending this meeting despite having disqualified himself, Mr. Gavin violated FAR 3.101-1, which requires employees to avoid strictly any conflict of interest or "even the appearance of a conflict of interest in Government-contractor relationships." When she made this determination about the appearance of a conflict of interest, the PCO was not aware that Mr. Gavin had sought and received an ethics opinion from the DASN(C4I) Ethics Advisor prior to attending the meeting. The PCO told us that if she had known during her investigation that Mr. Gavin had sought and received an ethics opinion before attending the April 5, 2018, meeting, she would have written a different conclusion reflecting that Mr. Gavin did not violate FAR 3.101-1.

We also interviewed the DASN(C4I) Ethics Advisor who provided Mr. Gavin the opinion that there were "no issues" with attending the April 5, 2019, JEDI Cloud meeting. This ethics advisor said she did not recall knowing on April 5, 2018, that Mr. Gavin had already accepted a job with AWS. The advisor told us, however, that her opinion that attendance was permitted would have been the same even if she had known that fact. The Ethics Advisor stated that the meeting was going to be a general acquisition strategy discussion, to be held before the DoD issued a solicitation, which meant the attendees would not be discussing a particular matter or specific contractors [parties].

The ASN(RDA) Ethics Advisor told us that the strategy meeting was not "specifically involving Amazon." He said that the fact that Mr. Gavin had already accepted the job on April 2, 2019, "really doesn't matter" because Mr. Gavin had already disclosed his interest in AWS and had recused himself. He told us that given all the facts, he did not believe there was "an actual conflict there." However, he

also told us that Mr. Gavin's attendance could have created the appearance of a conflict, and that the "safer, more conservative thing" would have been for Mr. Gavin to send someone else to the meeting in his place.

Mr. Gavin told us that this April 5, 2018, meeting was his last involvement with the JEDI Cloud procurement. He said he "never saw the [JEDI Cloud] RFP" that was issued after he had resigned from DoD and joined AWS. He said the Navy's input for the later-issued JEDI RFP would have been provided through the Navy Requirements Office, the N2/N6 and did not come from him.

We asked 11 witnesses from the CCPO, DDS, and CESG to describe Mr. Gavin's role and scope of influence in the JEDI Cloud procurement. We also asked Secretary Mattis and Deputy Secretary Shanahan this question. Nine of the 13 witnesses we asked either did not know Mr. Gavin at all, or knew who he was but had no interactions of any kind with him. These nine were Secretary Mattis, Deputy Secretary Shanahan, Ms. Lord, Mr. Daigle, Mr. Deasy, the PCO, the CCPM, the DDS Director, and a junior DDS employee. All of these nine said that either Mr. Gavin did not influence the JEDI Cloud procurement, or that they did not know whether Mr. Gavin had any influence on it. Mr. Daigle told us the complaint that Mr. Gavin "played a key role" in the JEDI Cloud procurement, was "a fabrication."

Of the four witnesses who knew Mr. Gavin and had interactions with him, one was a CESG member. He said he knew Mr. Gavin and that Mr. Gavin was not involved in the source selection, and in meetings Mr. Gavin was expressing the Navy's viewpoint on its own cloud path forward, and was wary of how the JEDI Cloud acquisition could "screw it up" in relation to the Navy's already ongoing separate cloud data uses. The remaining three witnesses attended the April 5, 2018, acquisition strategy meeting with Mr. Gavin and interacted with him. All three stated that Mr. Gavin's participation in the JEDI Cloud procurement was not substantial, and that he did not influence JEDI Cloud procurement decisions. For example, when asked how Mr. Gavin influenced the JEDI Cloud acquisition, one answered, "He didn't." This witness continued:

I mean he just acknowledged that there were multiple vendors in the space. It was a really robust conversation. So a number of folks chimed in and honestly I couldn't tell you if it was he that said it or somebody else. I know the names like Amazon, Microsoft, IBM, Oracle. You know, all of those were eventually brought up in that conversation, but it was bouncing all over the place. So, I don't really recall if he mentioned them specifically himself.

The CESG member who knew Mr. Gavin stated:

Did he have an opinion? Sure. I don't know if he influenced it. He was in the room. He was part of the conversation. He would be supporting fire, but nobody moved DDS off the starting point [single award]. That's kind of where this whole argument hinges on because nobody moved DDS. They started at a [single award] position. They ended at a [single award] position, and they didn't deviate at all.

Mr. Gavin retired from the DoD on June 1, 2018, and began his employment with AWS on June 18, 2018.

The PCO's investigation concluded that Mr. Gavin's conduct did not affect the procurement because his participation in the April 5, 2018, meeting did not "have any significance to the acquisition."

The U.S. Court of Federal Claims reviewed and agreed with the PCO's determination that Mr. Gavin's participation did not compromise the integrity of the procurement. In its opinion, the Court described the persons Oracle claimed were conflicted, which included Mr. Gavin, as "bit players" who did not taint the procurement. We include additional information about the GAO's review and decision, and the Court's opinion, in Appendixes A and B, respectively.

e. OIG Conclusion – Mr. Gavin

We concluded that Mr. Gavin's participation in the April 5, 2018, meeting did not influence the JEDI contract.

We also concluded that Mr. Gavin's January 11, 2018, written notification to his supervisor that he was exploring employment with AWS, which included a request for relief from participation in matters related to AWS, was consistent with the JER's requirements for disqualifying himself from Amazon matters.

Mr. Gavin's discussions, negotiations, and acceptance of a job offer with Amazon from January 11 through April 2, 2018, created a financial interest in Amazon that prohibited him from participating personally and substantially in any particular matter in which, to his knowledge, he had a financial interest, if the particular matter would have a direct and predictable effect on Amazon as his potential employer, and as a result, his own personal interest.

Therefore, when Mr. Gavin received an unsolicited invitation to participate in the April 5, 2018, meeting on the JEDI Cloud Acquisition Strategy, he was obliged, as the JER states, to "take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified." Mr. Gavin asked for advice from the DASN(C4I) Ethics Advisor after receiving the meeting invitation.

Mr. Gavin had already disqualified himself from Amazon matters. When Mr. Gavin's Chief of Staff asked the DASN(C4I) Ethics Advisor for an ethics opinion regarding Mr. Gavin's invitation to the April 5, 2018, JEDI Cloud meeting, both his Chief of Staff and the DASN(C4I) Ethics Advisor knew about Mr. Gavin's January 11, 2018, disqualification. They also knew that prohibitions against Mr. Gavin's personal and substantial participation in particular matters that could affect Amazon were in effect.

The written ethics advice that Mr. Gavin received permitted him to attend the meeting despite his recusal because the DASN(C4I) Ethics Advisor opined that a general JEDI Cloud Acquisition Strategy debate was not a particular matter that involved Amazon or any other potential contract competitors at that stage of the procurement. Particular matters include contracts, and as of April 5, 2018, there was no contract, or even a solicitation of offers for a contract. We found that Mr. Gavin requested, received, and followed an ethics opinion from a designated ethics official, and that he did not say anything about Amazon or its competitors in the meeting.¹⁴²

¹⁴² The "in good faith" element is from Chapter 2 of the JER, which incorporates 5 CFR 2635.107(b), and is presented more fully in the Appendix to this report.

The FAR states that participating personally and substantially in a Federal agency procurement means “active and significant involvement of an official in (1) drafting, reviewing, or approving the specification or statement of work for the procurement, (2) preparing or developing the solicitation, (3) evaluating bids or proposals, or selecting a source, (4) negotiating price or terms and conditions of the contract, or (5) reviewing and approving the award of the contract.” We determined that none of these things were discussed or accomplished in the April 5, 2018, meeting that Mr. Gavin attended, where the group reviewed a draft acquisition strategy, and at which Mr. Gavin spoke in favor of using a multiple award strategy.

Further, the FAR states that “participating substantially” means that the official’s involvement was “of significance to the matter.” At this meeting, Mr. Gavin spoke in favor of using a multiple award approach but did not advocate for any specific contractor and did not alter DDS’ proposed single award strategy. We determined that Mr. Gavin’s role and participation in this meeting was not substantial to the JEDI Cloud procurement.

We also note that the PCO’s investigation found that Mr. Gavin failed to avoid an appearance of impropriety when he attended the April 5, 2018, JEDI Cloud procurement meeting, and therefore violated FAR 3.101-1. However, as described above, the PCO was not aware during her investigation that Mr. Gavin had sought and received an ethics opinion before he attended the meeting, and she told us that had she known this fact at that time she would not have concluded that he violated FAR 3.101-1.

Yet, we also agree with the ASN(RD&A) ethics advisor’s opinion that in retrospect the “safer, more conservative thing” would have been for Mr. Gavin to send someone else to the meeting in his place. Moreover, there is no evidence that Mr. Gavin had disclosed to the ethics advisor or to his supervisors at this point that he had already accepted a job with Amazon. That, according to what the ethics advisor told us, would not have changed her advice that Mr. Gavin could attend. We believe, however, that Mr. Gavin should have disclosed that information to the ethics advisors, and allowed the ethics advisor to consider it at the time. We also agree with the ethics advisor that the better course of action would have been for Mr. Gavin to disclose that information, and for the ethics advisor to have recommended that he not attend the meeting, to avoid the appearance of a conflict of interest.

The PCO’s investigation and the Court’s opinion determined that Mr. Gavin’s limited overall participation in the JEDI Cloud procurement, and in this April 2018 meeting specifically, was not substantial enough to affect the integrity of the JEDI Cloud procurement. We agree. None of the witnesses we interviewed said that Mr. Gavin played a substantial role in the procurement or influenced the single award versus multiple award strategy. In fact, Mr. Gavin argued for a multiple award approach to the acquisition, which presumably would not have been in the interest of the perceived future front-runners, such as AWS or Microsoft, but Mr. Gavin did not succeed in influencing CESG opinions. The DoD ultimately selected the single award strategy several months later.

In sum, we concluded that Mr. Gavin should have used better judgment by not attending the April 5, 2018, JEDI Cloud Acquisition strategy meeting after he had accepted a job with AWS, or by sending someone else in his place, to avoid the appearance of a conflict. However, he did not violate ethical standards by following the ethics advice he received, and his participation in the meeting did not affect the JEDI Cloud procurement.

Mr. Gavin's Response to Our Tentative Conclusions

On February 27, 2020, we provided Mr. Gavin our tentative conclusions and an opportunity to comment before we issued our final report. On March 5, 2020, Mr. Gavin provided his response, in which he agreed with our conclusion and wanted to clarify a few points. We present and address Mr. Gavin's response in this section.

Regarding our conclusion "that Mr. Gavin did not commit an ethical violation," he requested that we note in our report that he also did not violate FAR 3.101-1, "Standards of Conduct." FAR 3.101-1 requires employees to conduct business in a manner above reproach, with complete impartiality, and with preferential treatment for none, and to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. We did not modify our final report on this point because our conclusion that Mr. Gavin did not commit an ethical violation already pertained to all applicable ethical standards, to include the FAR and the JER.

Regarding our finding that Mr. Gavin did not inform an ethics attorney of his April 2, 2018 acceptance of a job with Amazon before he requested ethics advice on whether he could attend the April 5, 2018 meeting on the acquisition strategy, Mr. Gavin wrote:

I stated that I did not recall whether I inform[ed] the attorney and per the [preliminary] report [the] ethics advisor stated that he/she did not recall being knowing [*sic*]. I would prefer not to imply that I intentionally avoided telling the attorney or ethic[s] advisor which was not the case. I simply don't recall whether I did or not. There was never any attempt to mislead or misinform the attorney and I don't want anyone [to] imply that.

However, we were unable to determine a date that Mr. Gavin informed anyone that he had accepted the job with Amazon. There was no evidence that he told the ethics attorney before he requested advice about attending the April 5, 2018 meeting. The ethics attorney told us he was not aware that Gavin had taken a job with Amazon until after Mr. Gavin had left the DoD. Yet, this point did not affect our conclusion regarding Mr. Gavin's ethical behavior because, as stated above in this report, the ethics attorney already knew that Mr. Gavin had disqualified himself from Amazon matters as of January 11, 2018. Knowing this he still gave Mr. Gavin ethics guidance permitting him to attend the April 5, 2018, meeting because the meeting was about general strategy and not about specific potential competitors for a future contract.

Mr. Gavin also wrote that his January 15, 2018, interview with Amazon was not for a specific job, but was to determine his general "fit" for the company's culture. In our preliminary report, we stated the interview's purpose was an opportunity for Amazon to determine Mr. Gavin's "suitability for employment with the company and not for any specific position at that time." Therefore, we made no modification on this point in this final report.

Mr. Gavin concluded his response by stating, "I think it's important to hear that previous public statements made about my violation of the FAR would have been different had all the evidence been made known."

After considering Mr. Gavin's response, we stand by our findings and conclusions.

3. Secretary James N. Mattis

We received complaints alleging that Secretary Mattis had a business relationship with Amazon and its commercial partner C5 Capital, and also held private meetings and dinners with Amazon officials leading up to the JEDI Cloud procurement. Allegedly, these meetings and dinners suggested possible preferential treatment toward Amazon in the JEDI Cloud procurement. The complaints further alleged that Secretary Mattis' Senior Advisor, Ms. Sally Donnelly, provided preferential treatment to Amazon by granting Amazon officials access to meetings with Secretary Mattis.¹⁴³

a. Background

In 2013, Secretary Mattis retired from the U.S. Marine Corps. Following his military retirement, Secretary Mattis served as the Davies Family Distinguished Visiting Fellow at the Hoover Institution at Stanford University, specializing in the study of leadership, national security, strategy, innovation, and the effective use of military force. He served as a board member on several boards, including:

- Center for a New American Security (CNAS),
- General Dynamics,
- Marines' Memorial Club,
- Marine Corps Scholarship Foundation,
- Theranos Inc., and
- Tri-Cities Food Bank.

b. Secretary Mattis' Post-Retirement Work

Secretary Mattis told us that between 2014 and 2016, he worked with the 6th Duke of Westminster, the British Ambassador to the United States, and Mr. André Pienaar, the CEO of C5 Capital, to establish a "turnkey operation" that would deliver hospital facilities in the United Kingdom (U.K.) and the Arabian Gulf for the British government. These hospital facilities sought to resemble the Walter Reed National Military Medical Center, Bethesda, Maryland, and sought to ensure that seriously injured British military service members received the best care possible because there was a shortage of rehabilitation "facilities."

Secretary Mattis said he recalled one trip he took to Bahrain because the 6th Duke of Westminster "wanted a relationship" between what he was going to offer the U.K. government for hospitals and what "they wanted to build somewhere in the Mideast Bahrain." Secretary Mattis met with the United Arab Emirates Minister of Health and Mr. Pienaar during this trip and they discussed "what would be the medical collaboration in terms of U.K. doctors." Secretary Mattis said that during the meeting, they discussed how to "share medical records," and he did not recall Amazon ever being discussed.

Secretary Mattis also told us that during this 2-year period, he "never had a financial

¹⁴³ We provide the specific allegations regarding Ms. Donnelly in the next section of this report.

relationship” with C5 Capital and “accepted no money from [C5 Capital].” He said he traveled overseas to “support their [the United Kingdom’s] efforts on the hospital” for wounded British warriors.

Secretary Mattis stated,

I received no money from them [C5 Capital]. They [C5 Capital] paid for my airfare, and my hotels, but I did not accept any money from C5. I considered this to be working for the wounded guys and I wouldn’t take—I wouldn’t expect money or accept money for something like that.

[Paragraph omitted]

I’ve never had one penny or any understanding [of C5 business relationship] with Amazon.

Secretary Mattis told us that his role during this period of time was to provide “linkage” between how the U.S. cared for “troops at Walter Reed, Bethesda” and how the United Kingdom hoped to provide the same care for their wounded military personnel. According to Secretary Mattis, Mr. Pienaar was the Duke’s “go to guy” to help establish the new hospitals.

Ms. Donnelly’s Work Prior to Her DoD Senior Advisor Role with Secretary Mattis

From 2013 to 2016, Ms. Donnelly worked as a consultant for C5 Capital. She said she had a prior business relationship with Mr. Pienaar from when the two co-owned SBD Advisors. She said they traveled on one occasion to the Middle East with Mr. Pienaar. She told us she accompanied Mr. Pienaar to a meeting with Secretary Mattis in support of Mr. Pienaar’s “second hat” working with the “Defense National Rehabilitation Centre” in Britain for wounded warriors. She said that during the meeting, they discussed “with people there [*sic*] advances in technology to support the wounded warriors.”¹⁴⁴

c. Secretary Mattis’ Nomination and Ethics Pledge

On December 1, 2016, the President nominated Mr. Mattis to become the 26th Secretary of Defense. On January 5, 2017, Secretary Mattis wrote a letter to the DoD Designated Agency Ethics Official (DAEO), as required by Federal law. In his letter, Secretary Mattis stated that he would not participate personally and substantially in any particular matter in which he knew he had a financial interest that would be affected by the matter. Regarding organizations in which he had served, Secretary Mattis wrote that he would not participate personally and substantially in any particular matter involving specific parties, if he knew that his former organization was a party, or represented a

¹⁴⁴ Ms. Donnelly and Mr. Pienaar co-owned SBD Advisors. Ms. Donnelly sold her share of ownership of SBD Advisors to Mr. Pienaar in January 2017, prior to entering on duty with the DoD. We discuss Ms. Donnelly, her former ownership of SBD Advisors, and her business relationship as a consultant to Amazon Web Services later in this report. The Defence and National Rehabilitation Centre (DNRC) was an idea of the Duke of Westminster. According to the DNRC’s website, the Duke’s intent was to create a 21st century version of the existing Defence Rehab Centre, Headley Court in Surrey, U.K., in a new location to serve the future needs of Armed Forces members. Additional information on this idea can be found at <https://www.thednrc.org.uk/what-is-this-all-about/the-dukes-idea.aspx>.

party in the matter, unless he was first authorized to participate in accordance with Title 5, Code of Federal Regulations (CFR) section 2635.502(d).¹⁴⁵

On January 20, 2017, Secretary Mattis became the 26th Secretary of Defense.

On January 28, 2017, the President of the United States issued Executive Order (EO) 13770, "Ethics Commitment by Executive Branch Appointees."¹⁴⁶ This EO obligates all Presidential Appointees in the Executive Branch to, among other requirements, avoid lobbying their respective agencies for 5 years, abide by all post-Government employment restrictions, and not engage in any activity on behalf of a foreign government, to include political activities. The EO also prohibits the appointee from accepting gifts from lobbyist and instructs the appointee that they cannot participate in any particular matter involving a specific party that is related to their former employer or clients, including regulations or contracts, for a period of 2 years after their appointment.

In a February 8, 2017, letter, Secretary Mattis updated his January 5, 2017, letter to the DAEO by pledging to honor the restrictions and other provisions detailed in the EO.

d. Secretary Mattis' Financial Disclosures and Ethics Advice

The complaints we received alleged that Secretary Mattis failed to disclose his financial ties with C5 Capital, which allegedly had a consulting relationship with Amazon. We reviewed Secretary Mattis' OGE 278e, disqualification letter, and screening arrangements. These documents did not refer to any financial interest in, or business relationship with, C5 Capital. The OGE's Public Financial Disclosure Guide section regarding "Gifts and Travel Reimbursements that are Not Reportable," states that, among other items, individuals are not required to report the following on an OGE-278e form: (1) Food, lodging, transportation, entertainment, or reimbursements provided by a foreign government within a foreign country or by the U.S. Government, the District of Columbia, or a state or local government, (2) Travel reimbursements required to be reported under the Foreign Gifts and Decorations Act, (3) Travel reimbursements received from a non-Federal employer, and (4) Anything received when you were not an employee of the U.S. Government.

On January 25, 2017, Secretary Mattis signed a memorandum for the DAEO. According to this memorandum, Secretary Mattis established specific screening arrangements by directing his Chief of Staff, Military Assistants, and other designated Administrative Assistants and staff to screen all incoming matters from non-Government entities, including any that requested or required his participation in a meeting or function. In such cases, his staff asked the SOCO attorneys for assistance and a legal opinion. If Secretary Mattis could not legally attend or otherwise participate, his staff sent the request to Deputy Secretary Shanahan or another appropriate DoD official, without Secretary Mattis' knowledge or involvement.

On February 8, 2017, Secretary Mattis sent a memorandum to the DAEO that updated his January 25, 2017 screening arrangement to account for his duty to honor the provisions of the January 28, 2017 Executive Order 13770, "Ethics Commitment by Executive Branch Appointees."

¹⁴⁵ The disqualification period is 2 years.

¹⁴⁶ Executive Order 13770, Ethics Commitments by Executive Branch Employees," requires every appointee in the executive branch, appointed on or after January 20, 2017, to sign the Ethics Pledge.

We also reviewed Secretary Mattis' official travel records for the trips mentioned in the complaint. These records included advice and opinions of SOCO attorneys regarding Secretary Mattis' travel, meeting engagements, screening requirements, financial disclosure, and potential personal or financial conflicts of interest. In addition, we reviewed records, notes, and e-mails from Secretary Mattis' meetings with industry, to include dinner requests and engagements, and e-mails from his staff that focused on any meetings Secretary Mattis had with Amazon and other potential JEDI Cloud procurement competitors.

Table 4 is a chronology of significant events related to Secretary Mattis' role in the JEDI Cloud procurement.

Table 4. Chronology of Significant Events Related to Secretary Mattis and the JEDI Cloud Procurement.

Date	Event
Dec. 2016	Secretary Mattis is nominated as the Secretary of Defense; begins receiving daily intelligence briefings from DoD and other Government agencies; briefings include information regarding cyber-attacks and threats to DoD data and systems.
Jan. 5, 2017	Secretary Mattis writes a letter to the SOCO DAEO disqualifying himself from participating personally and substantially in any particular matter involving personal or business relationships he held prior to his nomination.
Jan. 20, 2017	Secretary Mattis begins his duties as the Secretary of Defense.
Feb. 8, 2017	Secretary Mattis signs President's ethics pledge honoring the restrictions and other provisions in EO 13770.
Mar. 29 – Apr. 1, 2017	Secretary Mattis, Ms. Donnelly, and his staff travel to New York for official events, then to the United Kingdom for official meetings with various senior foreign dignitaries. Secretary Mattis and Ms. Donnelly attend a separate dinner with senior foreign dignitaries, Mr. André Pienaar the CEO of C5 CEO, and Ms. Teresa Carlson, Vice President, Amazon Worldwide Public Sector Business.
Apr. 13, 2017	Secretary Mattis attends an Aerospace Industries Associations event and meets with over 40 leaders from aerospace, national defense, and professional services industries to discuss a broad range of issues related to aerospace and defense industries.
Apr. 24, 2017	Secretary Mattis issues "Dialogue with Industry" memorandum to the Secretaries of the Military Departments, sharing his discussions with industry associations about "growing security challenges" and how DoD must work closely with industry to maintain technological capabilities and "push for more rapid innovation" within the DoD.
Jul. 21, 2017	Secretary Mattis issues "Administrative and Personnel Policies to Enhance Readiness and Lethality" memorandum to the Secretaries of the Military Departments to ensure personnel policies support and enhance warfighting readiness, which includes secure transmission of classified data to field elements.
Aug. 9-11, 2017	Secretary Mattis travels to Seattle, Washington, and Palo Alto, California, for meetings with leaders from Amazon, the Defense Innovation Unit (Experimental), Google, and Apple Inc., to discuss how the Pentagon can improve in recruiting and retaining young talent.
Aug. 12, 2017	Secretary Mattis defines the "strategic problem" statement regarding how to secure DoD's sensitive data and directs Deputy Secretary Shanahan to develop a strategy for "protecting information" within DoD's architecture.
Sep. 13, 2017	Deputy Secretary Shanahan issues "Accelerating Enterprise Cloud Adoption," memorandum establishing the CESG.

Oct. 5, 2017	Secretary Mattis sends a memorandum to DoD personnel providing his strategic guidance and tasking the DoD with three lines of effort: (1) restore military readiness as we build a more lethal force; (2) strengthen alliances and attract new partners; and (3) implement DoD business reform "Readiness," which includes secure storage and transmission of classified data to the warfighter.
Dec. 2, 2017	Microsoft requests a meeting with Secretary Mattis to discuss Microsoft's commitment to working with DoD.
Jan. 8, 2018	Secretary Mattis and Deputy Secretary Shanahan meet with Microsoft.
Jan. 17, 2018	Secretary Mattis, accompanied by Ms. Donnelly, meets with the CEO of Amazon, Mr. Bezos, and Ms. Carlson, a Vice President of Amazon, for dinner in Washington, D.C.
Feb. 14, 2018	Oracle requests a meeting with Secretary Mattis to discuss his modernization agenda, share insight from Oracle's experiences, and explore having Secretary Mattis visit Oracle.
Feb. 22, 2018	Deputy Secretary Shanahan and Under Secretary Lord meet with the CEO of Oracle, Ms. Safra Catz, and Senior Vice President of Oracle, Mr. Ken Glueck, because Secretary Mattis is unavailable.
Dec. 20, 2018	Secretary Mattis announces his resignation as Secretary of Defense and departs DoD on December 31, 2018.

e. Secretary Mattis' Role in DoD's Adoption of the Enterprise Cloud.

We interviewed Secretary Mattis about the impetus for the DoD Enterprise cloud and his interest in cloud capabilities. He told us that "from day one [as Secretary of Defense]," he received reports of cyber-attacks, malicious viruses, data breaches, and the loss of DoD intellectual property and classified information. Secretary Mattis told us that he believed that the DoD Information Technology (IT) structure was not being properly serviced, protected, or firewalled. He said he became increasingly aware that "we [DoD] were unable to protect sensitive information of all types" and the DoD "needed to get this under control." Secretary Mattis told us he heard from the Armed Services that many of their IT systems could not talk to each other and could not quickly share information. He later made this concern a part of his "strategic problem statement."¹⁴⁷

Secretary Mattis told us that in December 2016, after his nomination, he began engaging the CIA and private industry for help and ideas on how to secure DoD's sensitive information. He told us that the CIA previously had moved to a cloud to secure their classified information and were "adamant that the level of security in the cloud was very enhanced." He said:

By this point I'm starting to think this [the cloud] may be the way we've got to go, but I'm still just talking to people about a whole host of issues

....

I was not sold on [the cloud] even then. I stayed skeptical because I didn't consider myself an expert on it.

¹⁴⁷ "Strategic problem statement" is not a formal term or document. These were the words Secretary Mattis used to explain how he went about defining the DoD's IT challenges from a strategic perspective.

The 2018 National Defense Strategy reflected Secretary Mattis' concerns regarding the protection of sensitive information. The strategy stated that "Maintaining the [DoD's] technological advantage will require changes to industry culture, investment sources, and protection across the National Security Innovation Base."

f. Secretary Mattis' Meeting in the United Kingdom

The complaints we received alleged, among other issues, that Secretary Mattis and Ms. Donnelly provided preferential treatment to Amazon when they traveled through New York to the U.K. and had a private meeting with Amazon officials.

We determined that on March 24, 2017, a SOCO attorney reviewed Secretary Mattis' proposed March 29 through April 1, 2017, travel itinerary to New York and the U.K., which included a March 31, 2017, dinner hosted by Sir Graeme Lamb, a retired lieutenant general in the British Army. Other attendees were C5 CEO Mr. Pienaar; Amazon's Vice President for Worldwide Public Sector Ms. Teresa Carlson; British Chief of Defense General David Richards; British Army Major General James Chiswell; British Minister for the Middle East, North Africa, and Central Asia Tobias Ellwood; and Ms. Cheryl Plumridge, General Manager, Government Services Division of International SOS Government Services. The SOCO Attorney wrote in an e-mail, "no ethics objections" for Secretary Mattis' itinerary and the dinner in the U.K. with the named attendees.

From March 29 to April 1, 2017, Secretary Mattis, Ms. Donnelly, and members of his staff traveled to New York and the U.K. Secretary Mattis told us that the purpose of this travel was to gain perspective from outsiders, build relationships, discuss foreign relations, and reconfirm alliances with world leaders.

Secretary Mattis and his staff arrived in the U.K. on March 30, 2017. On March 31, 2017, he attended a country briefing at the U.S. Embassy and visited the U.K. Ministry of Defense for bi-lateral meetings. He met with former U.K. Prime Minister Theresa May before meeting with General Lamb later that evening.

According to Secretary Mattis, these meetings were focused on keeping the U.S. and U.K.'s "militaries working together." Following these meetings, General Lamb organized a guest list of what Secretary Mattis called "old friends," to host Secretary Mattis for a dinner to be held at a local club. Secretary Mattis said there was no specific agenda to be discussed at the dinner. Mr. Pienaar was one of the attendees, and Ms. Carlson accompanied him to the dinner. Secretary Mattis' Senior Military Advisor, Admiral Craig Faller, and Ms. Donnelly also attended the dinner. According to the "SecDef Travel Itinerary to UK," dated March 27, 2017, General Graeme Lamb was designated as the "Host."

Secretary Mattis told us that this dinner was the first time he met Ms. Carlson. He said he was "not certain why Teresa Carlson was included" in the dinner "although Sally [Donnelly] knew Teresa [Carlson]." He told us that he did not recall "a single mention of the cloud or of Amazon" at the dinner.

Secretary Mattis said Mr. Pienaar attended the dinner and that Mr. Pienaar was a friend who Secretary Mattis had worked with previously on the British wounded warrior hospital initiative. Secretary Mattis described Mr. Pienaar as "kind of along the same lines as a Member of Parliament

[helping with the hospital initiative].” Secretary Mattis said that during the dinner, he and the other attendees talked about:

old times and laughing about things ... mostly just recalling old times amongst people who fought together in various places, and served together, about the Middle East in general and what was happening, and about the [wounded warriors] hospital Teresa Carlson being the outlier because I just didn’t know her.

Ms. Donnelly told us that she knew Ms. Carlson, prior to Ms. Donnelly starting her employment with the DoD, because they were acquaintances at Amazon Web Services.¹⁴⁸ Ms. Donnelly said that she did not have any “insight” as to why General Lamb invited Ms. Carlson to the dinner. She said it was “arguable I guess whether to call it a meeting because it was a dinner.” She said Secretary Mattis, General Richards, and Minister Elwood talked about wounded warrior care issues and ongoing events in the Middle East.

We contacted Ms. Carlson, through her AWS attorneys, for information about her attendance at the dinner. In her response, Ms. Carlson wrote that she was invited to the dinner because of her prior involvement in veterans’ wellness initiatives, which she “learned was a topic of interest to a number of the attendees” at the dinner. She wrote that she did not recall who invited her; however, she received advanced details about the dinner from Mr. Pienaar’s Chief of Staff. She wrote that the dinner was held at a private club in London and that she was introduced to Secretary Mattis as “Teresa Carlson of AWS.” According to Ms. Carlson, during the introduction she explained to Secretary Mattis that she was a part of the Amazon Web Services cloud computing team. She said she recalled Secretary Mattis saying to her that he did not have much familiarity with cloud computing and that he could not envision the DoD moving to the cloud because of potential security issues. She stated that she did not respond to Secretary Mattis’ comment.

Ms. Carlson further wrote that a number of topics were discussed during the dinner. For example, one topic of discussion was whether the U.K. and the U.S. were doing enough work together on veterans’ care issues. She also described other discussions as “small talk, including [dinner attendees] sharing their past experiences serving in the military.” She said she sat between Minister Ellwood and General Richards and talked “primarily with them.” She also wrote that she did not discuss any DoD procurements with any of the dinner attendees.

We interviewed Mr. Sweeney, who was Secretary Mattis’ Chief of Staff at the time of the New York and U.K. trip and managed Secretary Mattis’ schedule. Mr. Sweeney said he did not go on the trip. He told us, “I guess” Ms. Donnelly set up the dinner, and that he thought Ms. Donnelly invited Ms. Carlson to attend. He suggested we ask Admiral Faller because he attended the dinner. Admiral Faller told us that British General Lamb and Secretary Mattis were good friends. He told us he did not know who invited Ms. Carlson and Mr. Pienaar, and that he heard no discussion about cloud computing during the dinner.

¹⁴⁸ Ms. Sally Donnelly worked for Amazon between 2015 and 2016. She also worked for C5 Capital from 2013 until she joined the DoD. Her employment and relationships are presented in detail later in this report.

During this trip, the dinner and most of Secretary Mattis' meetings were categorized on the official itinerary as "Off the Record – Listening Mode." Secretary Mattis told us that "listening mode" meant he could just listen to conversations and information. Secretary Mattis said "there was no agenda for the dinner" and "we were just going to sit around and shoot the breeze" about the fighting in Yemen and wounded warrior hospital issues.

g. Meeting with the Aerospace Industries Association

On April 13, 2017, Secretary Mattis attended the Aerospace Industries Association (AIA) meeting in Arlington, Virginia. The association includes over 40 Chief Executive Officers (CEOs) and executive leadership from the National Defense Industrial Association (NDIA) and the Professional Services Council. Meeting attendees included CEOs and executives from major defense companies and trade associations. The purpose of the meeting was to provide Secretary Mattis with an opportunity to hear concerns from and talk to industry about DoD matters.

According to his meeting talking points, Secretary Mattis spoke to the attendees about (1) robust, balance and stable defense spending, (2) bringing regulatory reform to the DoD, (3) strategic approaches to security cooperation, (4) filling capability gaps with high-level technologies, and (5) restoring readiness and addressing current operational shortfalls. Secretary Mattis emphasized the need for the U.S. military to maintain its technological superiority and not be "out-paced by our adversaries." He also discussed the Defense Innovation Unit Experimental (DIUx) and how it was created to increase the Department's access to leading edge technologies and talent in the commercial sector, with the goal of accelerating innovation into the hands of the warfighter.¹⁴⁹

Secretary Mattis told us that he informed attendees that he needed their help with the "securing of our country" from cyber and other threats by "powerful nations," specifically, Russia and China. The attendees expressed their concerns to Secretary Mattis that DoD personnel would not meet with them and were not allowed to talk to industry. Secretary Mattis told the leaders, "We [DoD personnel] can meet [with industry]. We just have to do it in accordance with the law and in accordance with ethical guidelines."

Secretary Mattis also told us that throughout his tenure, he continued to meet with industry leaders to learn about technological advantages in artificial intelligence and machine learning. He said he was concerned about the:

needs of the warfighters and it was very clear none of the warfighter's were happy with the IT structure that we had at the time. We had to move data faster or it was just going to be basically irrelevant to the fight ... not having connected databases was a significant part of the problem ... the idea that people in the midst of a fight or running operations were going to have to have multiple databases that were not integrated meant that we were putting a burden on the warfighters, not enabling the warfighters.

After meeting with the Aerospace Industries Association, Secretary Mattis issued a memorandum, "Dialogue with Industry," which provided guidance to the Secretaries of the Military

¹⁴⁹ Defense Innovation Unit Experimental (DIUx) is now known as Defense Innovation Unit (DIU). In this report, we refer to it as DIUx, what the unit was called in 2017.

Departments and the Chiefs of the Military Services regarding interacting with industry. In this April 24, 2017, memorandum, Secretary Mattis wrote:

I expect you to engage with and work collaboratively with private industry in a fair and open manner. You have all done a good deal of work in this area, but more needs to happen and a sense of urgency must accompany your initiative to collaborate intensely with industry to discover and field offsetting advantages. I request that you personally set the example for engaging with industry representatives within legal boundaries to ensure we have the fewest regrets when we confront our enemies.

Secretary Mattis told us he issued his guidance following his meeting with the Aerospace Industries Association leaders because he believed that DoD was too complacent and needed get a sense of urgency in collaborating with industry to better protect the country.

h. Attempts to Schedule an April 2017 Meeting With Amazon's Mr. Bezos

On April 17, 2017, an Amazon representative e-mailed Mr. Anthony DeMartino, former Deputy Chief of Staff to Secretary Mattis, and asked for an April 27, 2017, meeting between Secretary Mattis and Mr. Bezos. The Amazon representative also asked for Ms. Donnelly's contact information. Mr. DeMartino subsequently consulted Ms. Donnelly about Amazon's request to meet with Secretary Mattis. On April 18, 2017, Ms. Donnelly sent Mr. DeMartino an e-mail, in which she wrote, "We should stand back and let the [Secretary of Defense's] schedule process work—we should take no action to help. Not our place, not proper." Mr. DeMartino replied to Ms. Donnelly, "Roger. My thoughts exactly."

According to an e-mail, on April 18, 2017, a member of Secretary Mattis' staff received a telephone call from an Amazon representative requesting to schedule a meeting between Secretary Mattis and Mr. Bezos. The Amazon representative explained that Secretary Mattis and Ms. Donnelly had had dinner with Ms. Carlson in the U.K. and "at the dinner, the SD [Secretary Defense Mattis] expressed interest in meeting with Bezos at some point." According to the e-mail, the Amazon representative also stated to Secretary Mattis' staff member:

[Jeff] Bezos is going to be in the area on 27 April and is free all afternoon (Bezos is speaking at the AFCEA [Armed Forces Communications and Electronics Association] spring intel [intelligence] symposium in the morning). Purpose of discussion would be for Bezos to impart his thoughts/observations on DoD's relationship with the tech [technology] sector.

Mr. Sweeney received the e-mail discussing the conversation between the Amazon representative and the staff member. In an e-mail response to the staff member, Mr. Sweeney wrote, "let's work this [invitation] through the machine."

Admiral Faller told us that "the machine" was the informal name given to a small group of officials in Secretary Mattis' office who coordinated or completed actions, reviewed documents, and made recommendations. He explained that it was analogous to a Commander's Action Group, which Secretary Mattis had when he was the Commander, U.S. Central Command. Admiral Faller said that

sometimes “the machine” reviewed requests to get on Secretary Mattis’ schedule, but the machine worked on more than just scheduling.

On April 19, 2017, the staff member replied to Mr. Sweeney’s e-mail, “no objections from the machine on this potential meeting; we think this would be a good meeting to arrange if feasible.” On April 20, 2017, Mr. Sweeney e-mailed Ms. Donnelly and Admiral Faller, informing them, “we can make this work.” He asked them to coordinate the meeting with Secretary Mattis before they committed him to the meeting with Mr. Bezos.

On April 21, 2017, Admiral Faller and Ms. Donnelly received an e-mail from a DoD staff member who was “circling back to see if we want to accept the office call with Jeff Bezos of Amazon and Blue Origin.”¹⁵⁰ On April 23, 2017, Ms. Donnelly sent an e-mail to Admiral Faller providing reasons why Secretary Mattis should meet with Mr. Bezos. She wrote,

- (1) He [Mr. Bezos] asked (via Teresa Carlson at the dinner in London.),
- (2) Amazon is one of the most successful start ups in the history of the US economy ...
- (3) Amazon has revolutionized delivery and consumer service ...
- (4) Amazon’s success based on technical excellence and security. The Amazon cloud is the foundation of all Amazon’s businesses and allows unprecedented speed. Amazon’s cloud is one of four hyperscale cloud providers (the others are Google, Facebook, Microsoft). Amazon’s focus on security ... was so convincing to CIA that the Agency two year ago took the surprising step of migrating the bulk of its secure work to Amazon....
- (5) Bezos has built from scratch a space company (Blue Origin) which, along with SpaceX, is transforming space flight ...
- (6) Bezos owns the Washington Post
- (7) Bezos serves on the Defense Innovation Board.

Ms. Donnelly, Admiral Faller, and Mr. Sweeney told us that Mr. Sweeney was the authority regarding scheduling Secretary Mattis’ meetings. Ms. Donnelly said Mr. Sweeney was the “decider of who gets in meetings, and who goes to meetings [with the Secretary of Defense].” Admiral Faller said that anyone who wanted to see Secretary Mattis had to go through Mr. Sweeney. Mr. Sweeney confirmed to us that one of his primary duties was to manage Secretary Mattis’ schedule.

On April 24, 2017, an Amazon representative e-mailed Mr. DeMartino stating, “there appears to be a disconnect between the Secretary’s front office regarding the potential [Secretary] Mattis/Jeff [Bezos] meeting this Thursday ... can you help out?” Mr. DeMartino replied, “having supported AWS as a consultant, I have a 1-year no help out clause.” Mr. DeMartino identified another staff member who the Amazon representative could contact for assistance.

We asked Secretary Mattis about this meeting with Mr. Bezos. He told us he “probably said” that he would like to meet Mr. Bezos; however, he told us he did not recall meeting with Mr. Bezos on April 27, 2017. After reviewing Secretary Mattis’ calendar and interviewing his meeting scheduler, we did not find any meetings with Mr. Bezos scheduled for April 27, 2017, or any evidence that this proposed meeting between Secretary Mattis and Mr. Jeff Bezos ultimately took place.

¹⁵⁰ Blue Origin is an American privately funded aerospace manufacturer and sub-orbital spaceflight services company headquartered in Kent, Washington.

i. Meetings with Industry in Washington State and California, August 2017

The complaints we received alleged that Secretary Mattis and Ms. Donnelly provided preferential treatment by meeting with Amazon officials during a trip Secretary Mattis made to the states of Washington and California from August 9 through 12, 2017. The complaints stated that the Executive Director for the Defense Innovation Board (DIB) traveled with Secretary Mattis and could provide us with significant information about these meetings and discussions Secretary Mattis had while in Washington and California.

We found that immediately prior to his trip to Washington and California, Secretary Mattis had grown concerned about the DoD's data security posture and ability to share sensitive data real-time with operational elements throughout the world. On July 21, 2017, he issued a memorandum, "Administrative and Personnel Policies to Enhance Readiness and Lethality," to the Secretaries of the Military Departments. Secretary Mattis issued the memorandum because he wanted the DoD to do more to ensure that personnel policies supported and enhanced warfighting readiness, which included technologies for secure transmission of classified data to field elements.

Secretary Mattis told us that before his trip he had been reading and thinking a lot about companies like Amazon, Microsoft, Apple, and Google, and what they could offer the DoD in ideas for hiring and retaining great people, and technical solutions such as data clouds for securing the DoD's data for real-time transmission directly to warfighters. Secretary Mattis said that Ms. Donnelly knew of his interest and concerns about cloud technology and suggested that he travel to the west coast to meet with the CEOs of the companies he had been reading about, and learn more about their available technologies. Secretary Mattis told us that at his request, Ms. Donnelly and other staff members organized an August 2017 trip to Seattle, Washington and Silicon Valley in California, to meet with executives from Amazon, Microsoft, Google, and Apple. He said that the purpose of the trip was to help him better understand cloud capability and data security.

We confirmed that Secretary Mattis and members of his staff traveled to Washington state and California to visit with DoD personnel and members of industry. During this trip, Secretary Mattis met with the CEOs of Amazon, Apple, and Google, as described in more detail later in this section. Ms. Donnelly also assisted in scheduling a meeting for Secretary Mattis with Microsoft officials; however she told us that she was unable to "get Microsoft on the schedule" because the "CEO [Mr. Satya Nadella] wasn't there at the time."

We interviewed the Executive Director for the Defense Innovation Board (DIB), who accompanied Secretary Mattis on this trip and whom the complaints indicated would have details relevant to the allegations. The DIB Executive Director told us that prior to departing for the Silicon Valley trip, Secretary Mattis was concerned about the security of DoD's sensitive information. The Executive Director told us:

[Secretary] Mattis was very concerned about security, he was very concerned about the overabundance of information encouraging micromanagement of Commanders in the field, but he was also concerned about falling behind technologically and great power rivalry.

The trip began on August 9, 2017, with a visit to U.S. Navy personnel stationed at Naval Base Kitsap, Bangor, Washington. Secretary Mattis then visited Amazon Headquarters in Seattle, Washington, before traveling to California. While in California, he met with leadership from the DoD's Defense Innovation Unit Experimental (DIUx), Google, and Apple, before returning to Washington, DC. The Executive Director told us that he prepared the read-ahead objectives and purpose for Secretary Mattis' meetings with DIUx, Amazon, Apple, and Google. We describe below what we found about each of these meetings with industry executives during the August 2017 trip.

Seattle Meeting with Amazon

On August 10, 2017, Secretary Mattis met with Mr. Bezos and AWS CEO Andy Jassy at Amazon Headquarters. Secretary Mattis told us this was the first time he and Mr. Bezos met. According to the read-aheads his staff provided to Secretary Mattis, the purpose for this the visit to Amazon was to:

1. Understand Amazon's approach to innovation and leadership that enables it to retain skilled talent,
2. Develop a deeper understanding of cloud computing and how it can benefit the DoD and the national security enterprise,
3. Discuss Amazon's use of data analytics through machine learning and artificial intelligence and how those same benefits can be applied to the DoD, and
4. Understand commercial cybersecurity practices that enable Amazon to defend against threats.

Secretary Mattis said that he and Mr. Bezos discussed how to lead an organization and get this kind of "West Coast initiative ingrained, inculcated into the [DoD] corporate culture." Secretary Mattis told us that:

He [Mr. Bezos] was trying to figure out how you would scale up a startup company, but keep the startup ... day one mentality I was asking him about it because I needed to take like a Fortune 100 company and bring in kind of startup mentality, the aggressiveness, the initiatives, the risk-taking that allowed the Pentagon basically retake the high ground in our competition with adversaries where our competitive edge was clearly eroding. We needed to find ways to run the Pentagon that rewarded that kind of fresh thinking ... It was much more about how you select the right people, how you reward the right behavior in the organization.

Secretary Mattis said he told Mr. Bezos that he would at a later date "like to continue this discussion" on selecting the right people to make the DoD more agile. He told us that he had to rush to California for his meeting with DIUx, but wanted to continue his discussion with Mr. Bezos on selecting the right people and how to reward the right behavior.

In an August 14, 2017, e-mail from an Amazon employee to Deputy Secretary Shanahan's office, the Amazon employee wrote, "I heard that Jeff Bezos and the Secretary [Mattis] had a terrific meeting last week. Jeff B[ezos] said that he loved meeting the Secretary We would love to schedule some time with [Deputy Secretary Shanahan] and Jeff Wilke [CEO, AWS Worldwide Consumer] ... on

Wednesday, September 6 [2017].” We found no evidence that DoD personnel took any steps to schedule a follow-up meeting with Secretary Mattis as a result of this e-mail.

After Secretary Mattis’ one-on-one meeting with Mr. Bezos and the group meeting with several Amazon officials during that same visit, a staff member accompanying Secretary Mattis wrote an e-mail advising Ms. Donnelly, “Boss did say he’s ‘99.9% there’ in terms of going to cloud.”

We asked Secretary Mattis about the Amazon employee’s description of the meeting with Mr. Bezos and he told us that it was accurate. Secretary Mattis told us that he had spent months concerned about how to “protect [DoD’s sensitive] information.” He said that he knew that the cloud was the “way industry thinks” and that the “CIA are all going that way” and that the “DoD had better get with the program and figure out how to do it [secure its data].” He said his thinking that cloud technology might be a solution for the DoD’s data security needs was not based solely on his meeting with Amazon.

Meeting with DIUx

Later on August 10, 2017, Secretary Mattis traveled to Mountain View, California, where he met with DIUx leadership. Secretary Mattis said he visited DIUx so he could understand the value of DIUx and endorse the Defense Innovation Unit, learn about artificial intelligence and the dramatic impact it may have on the future of warfare with a great sense of urgency, and understand the challenges that the DoD faced in these areas.

Meeting with Google

On August 11, 2017, Secretary Mattis met at Google’s Headquarters in California with several Google executives, including the CEO, Mr. Sundar Pichai; the Vice President of Access Services at Alphabet, Mr. Milo Medin; and Google’s, Senior Vice President and General Counsel, Mr. Kent Walker. According to Secretary Mattis’ read-ahead briefing, the purpose for this visit was to understand (1) the strategic implications of artificial intelligence; (2) the benefits of cloud computing and how the commercial sector uses data as a strategic resource; (3) cloud computing; (4) information security; and (5) Google’s unique approach to its employees and how the DoD can potentially adapt similar practices to be more agile, flexible, and attractive to highly skilled talent.

Secretary Mattis told us that Mr. Pichai presented a “very strong” position on why the DoD should move its sensitive data to the cloud and told Secretary Mattis, “there’s no way to do what you want to do I’ve heard what you want as far as protecting information and sharing, and technologically there’s no way around going to the cloud.”

After the meeting with Google, a staff member who accompanied Secretary Mattis wrote an e-mail advising Ms. Donnelly,

Very substantive discussion throughout Google folks hit home the benefits of cloud and importance of AI/ML [Artificial Intelligence/Machine Learning]. Also talked through conversion process to cloud (length of time/challenges). Good info on lessons learned. On the margins, boss also indicated that he’s ready to move to cloud and perhaps very soon.

Meeting with Apple

Secretary Mattis met with Apple's CEO, Mr. Tim Cook, on August 11, 2017, at Secretary Mattis' hotel in California's Silicon Valley area. Secretary Mattis told us that Ms. Donnelly personally set up this meeting with Mr. Cook. According to a July 19, 2017, e-mail from a member of Secretary Mattis' staff to Ms. Donnelly, discussion topics at meeting would be (1) economics; (2) geopolitics – China technology; and (3) innovation ecosystems and culture. Secretary Mattis told us,

I think that Tim Cook's point was very strong about it [information security]. It wasn't about the cloud, Tim was all over about protecting information in general of what was happening and that sort of thing. But I don't recall, I just don't recall there the cloud coming up, but it may have. I just can't recall it.

After the meeting with Apple, a staff member accompanying Secretary Mattis wrote an e-mail advising Ms. Donnelly, "Tim Cook meeting also solid. Talked China, Russia (similarities between the two), future of technology (some concerns)." The e-mail did not mention whether the two discussed cloud technology specifically.

DoD Cloud Strategic Guidance to Staff between Industry Meetings

On August 12, 2017, at the conclusion of the trip to Washington and California, a staff member traveling with Secretary Mattis sent an e-mail to Deputy Secretary Shanahan and Under Secretary Lord, stating that "[Secretary Mattis] now believes in Cloud tech and wants to move the Department to it; we have the baton on pulling together a plan for him." The staff member wrote that during the trip:

Although many technologies were discussed, Cloud was the centerpiece: why the tech sector moved to it, challenges in doing so, and the security and analytics/machine learning (ML) benefits of doing so. The last area is where the SD did most of his probing. All companies did a good job fielding questions and explaining their technologies, and we had ample opportunity to put things in a strategic context for the Boss.

The staff member included in his e-mail summary of how the trip affected Secretary Mattis' thinking about protecting and securely sharing DoD's sensitive information in real-time between warfighters:

By the time the trip had completed, [Secretary Mattis] shifted from skeptical to convinced that we must move to the cloud to remain competitive in development, efficient in administration, and lethal in operations. I got the action (at least six times) to meet with you both and pull together a plan. I had a chance to discuss what that plan might look like with SD before he departed.

The DIB Executive Director told us that later in the day on August 12, 2017, Secretary Mattis gave verbal instruction to his staff on his strategic direction regarding adopting cloud technology. According to the DIB Executive Director, after he concluded his last meeting, Secretary Mattis told the Executive Director that he wanted “to explore it [cloud] and pursue it ... we have to get the Department to the cloud” and “I need help figuring out how to do it.” The Executive Director said he believed that Secretary Mattis was wrestling between security concerns and innovation. He said the questions Secretary Mattis asked during the trip to Washington and California were mainly about information security. Secretary Mattis told us “By this point it’s becoming very clear that we’re going to have to have a way of exchanging information in real time.”

Secretary Mattis told us that he told his staff that he wanted to move the Department to the cloud and that (1) the [IT] system[s] had to be able to talk to each other, (2) the information had to be swiftly available and protected from those who should not have it, and (3) the system had to work in a war. Secretary Mattis explained that he could not send two military services off to war if their IT systems could not securely communicate with one another on the battlefield.

According to the DIB Executive Director, Secretary Mattis directed him and other staff members to “write me a memo to figure out how to get it done.” The DIB Executive Director told us that he called the DDS Director for help in preparing the DoD cloud adoption memorandum. The DDS Director told us that this was the only time that Secretary Mattis said to him, “we need to figure out how to do the cloud.”

Secretary Mattis told us that after his trip to Washington and California, he told Deputy Secretary Shanahan that the cloud strategy must be “aligned to solving problems” and transparent between all DoD components. Secretary Mattis said he told Deputy Secretary Shanahan that all of the Services’ systems had to work together and that it was Deputy Secretary Shanahan’s job to “make sure that happened”. Secretary Mattis said, “Again, I’m not going to tell people how to do it, but I’m going to be adamant” that the cloud has “to be secure.”

On September 13, 2017, Deputy Secretary Shanahan issued a memorandum, “Accelerating Enterprise Cloud Adoption,” to all of the DoD. This memorandum identified “several realities” from Secretary Mattis’ trips:

- 1) Technologies in areas like data infrastructure and management, cybersecurity, and machine learning are changing the character of war;
- 2) Commercial companies are pioneering technologies in these areas; and
- 3) The pace of innovation is extremely rapid.

In the memorandum, Deputy Secretary Shanahan directed that:

aggressive steps [be taken] to establish a culture of experimentation, adaption, and risk-taking; to ensure we are employing emerging technologies to meet warfighter needs; and to increase speed and agility in technology development and procurement.

On September 13, 2017, Deputy Secretary Shanahan also established the CESG and directed the group to brief him bi-weekly on their progress. He also directed the DDS Director to lead the first phase of the cloud adoption initiative.

On October 5, 2017, Secretary Mattis sent a memorandum to all DoD personnel sharing his departmental guidance for FY 2018. In this memorandum, Secretary Mattis tasked the DoD with three lines of effort: (1) restore military readiness as we build a more lethal force; (2) strengthen alliances and attract new partners; and (3) implement DoD business reforms. Secretary Mattis told us that:

building a more lethal force required information sharing at the speed of relevance ... my goal was to build stronger and more alliances. So you had to be able to share some of the information, not all of it, but if we were going to be fighting in a coalition you had to have the information available to share or you are going to be neuter or marginalize the Allied forces ...on the business reforms there was no way I became very much aware, there was no way to justify information systems that would fail at the point of contact with the enemy. They had to be protected, resistant, and resilient.

Secretary Mattis told us that he assigned Deputy Secretary Shanahan and the DDS Director to develop and execute a cloud strategy that would protect DoD information, and that this assignment aligned with Secretary Mattis' "three lines of [DoD] effort." Secretary Mattis said that Deputy Secretary Shanahan's and the DoD Chief Information Officer's (CIO) backgrounds in industry were key to help him implement his strategic guidance because they understood industry. He said he identified Deputy Secretary Shanahan as the "superintendent" responsible for maturing the DoD Cloud initiative. Secretary Mattis also said that his direction to Deputy Secretary Shanahan and the CIO was that they would "find a way to protect [DoD's] information ... and to do it fast." Secretary Mattis said he never addressed the JEDI Cloud acquisition with Deputy Secretary Shanahan or anyone else as he was not interested in the acquisition – he only wanted the problem with securing DoD's information quickly solved.

On March 2, 2018, Deputy Secretary Shanahan issued a memorandum providing guidance to DoD leaders regarding how to engage with industry. In his memorandum, Deputy Secretary Shanahan wrote:

Industry is often the best source of information concerning market conditions and technological capabilities. This information is crucial to determining whether and how industry can support the Department's mission and goals There is a broad range of opportunities for communications with industry in a fair, impartial, and transparent manner that fall well within the parameters of the ethics and procurement laws.

Follow-up Meeting with Amazon

On October 18, 2017, Secretary Mattis sought guidance from a SOCO Attorney about a second one-on-one meeting with Mr. Bezos. Secretary Mattis told us that he and Mr. Bezos both "agreed in Seattle" to continue their discussions on "how do you select the right people and how do you reward the right behavior." Secretary Mattis explained to us that he requested to meet with Mr. Bezos alone

and ran the requests by SOCO ethics officials. Mr. Sweeney and other staff personnel were aware of the request. In a reply e-mail to Mr. Sweeney and staff personnel, a SOCO attorney wrote:

I wanted to follow-up with you on SD [Secretary Mattis] question about meeting with Mr. Jeff Bezos. I do not have an ethics objection to SD [Secretary Mattis] meeting with Mr. Bezos. I also do not think it poses an optics concern as long as SD [Secretary Mattis] is willing to meet with representatives of similarly situated entities. The key is for engagement with industry to be fair, even and transparent. In the past when contractors have asked to come in to basically pitch their products and services to SD or DSD, we have normally advised that these meetings be directed down as they are not in position to make specific contract decisions; however, based on our discussion, it sounds like the proposed engagement with Mr. Bezos would be at a much higher level (not a sales pitch). Additionally, I confirmed that Mr. Bezos is not a member (or even a quasi-member) of the Defense Innovation Board, so I am not concerned about triggering Federal Advisory Committee Act restrictions."

On November 7, 2017, after reviewing the ethics opinion, Ms. Donnelly forwarded an e-mail to Mr. Sweeney, Admiral Faller, and Secretary Mattis' scheduler to coordinate a meeting between Secretary Mattis and Mr. Bezos. According to the e-mail, Secretary Mattis requested to meet Mr. Bezos for dinner on November 30, 2017; however, Mr. Bezos was not available on that date. In the e-mail, Ms. Donnelly wrote, "[Mr.] Bezos has resked [rescheduled] from Nov 30 He [Mr. Bezos] asked for one of the following [dates]: Jan 17, 18, 26, or 28. Can we lock one of those in?" Ms. Donnelly further wrote that the proposed dinner was a continuation of Secretary Mattis' and Mr. Bezos' summer meeting in Seattle, Washington. Mr. Sweeney confirmed Secretary Mattis' availability, and the dinner was scheduled for January 17, 2018.

On January 11, 2018, Ms. Donnelly sent an e-mail to several of Secretary Mattis' staff members in which she identified potential topics of discussion during Secretary Mattis and Mr. Bezos' dinner scheduled for January 17, 2018. The identified topics included the "continuation of the discussion on leadership and selecting talent," technology trends focused on security, view[s] on China and global trends, space technologies, and Mr. Bezos' "offer to help support the DoD."

On January 17, 2018, Secretary Mattis and Mr. Bezos met for dinner at a restaurant in Washington, D.C. Ms. Donnelly and Ms. Carlson also attended the dinner. Secretary Mattis said his intent for the meeting was to continue their discussion about "how do you select the right people, and how you reward the right behavior" in Secretary Mattis' efforts to revamp the DoD and hire and retain young talent. Secretary Mattis said he wanted to hire the "right people to make the Department more agile," and this included "everything from the right generals to command units, to the right people who can take science a step further."

We also asked Ms. Carlson about this dinner. In her response to us, Ms. Carlson wrote that following the August 2017 meeting between Secretary Mattis and Mr. Bezos in Seattle, she was contacted by someone in Secretary Mattis' office about scheduling a dinner between Secretary Mattis and Mr. Bezos so they could "continue their discussions." She wrote that she did not recall who initially contacted her from Secretary Mattis' office, but she wrote that the initial coordination started in September 2017 and lasted through January 2018. She wrote that she worked with Ms. Donnelly and Secretary Mattis' assistants to schedule a date when both Mr. Bezos and Secretary Mattis were in Washington, D.C.

Ms. Carlson further wrote that during the dinner, Secretary Mattis and Mr. Bezos discussed "leadership, decision making and innovation." She wrote, for example, that in the context of innovation, there were high-level discussions about how future trends in technology can contribute to the warfighter's mission. She also wrote that there was a brief mention of artificial intelligence, machine learning, and the cloud as examples of where the DoD could improve training and aid in decision-making for the troops. She wrote that she recalled Secretary Mattis and Mr. Bezos discussing the current global landscape, with focus on China and India. Mr. Bezos talked about the concept of failure and how to "fail fast," meaning that in uncertain environments one should embrace and not worry about intelligent or cheap failures. There were no formal agendas for the dinner and no discussions about DoD procurements. Ms. Carlson wrote that she and Ms. Donnelly observed Secretary Mattis' and Mr. Bezos' conversation; however, they did not participate or contribute to it. In addition, according to Ms. Carlson, she and Ms. Donnelly engaged in "small talk," the details of which she did not remember.

Meeting with Microsoft

On December 2, 2017, Ms. Donnelly received an e-mail from a Microsoft representative requesting a meeting between Secretary Mattis and Microsoft CEO, Mr. Satya Nadella. The Microsoft representative wrote, "Can we hold 1400 on the 8th [of December] for a call as an alternative to meeting in person?" Ms. Donnelly coordinated this meeting request through the SOCO attorney, who opined:

I see no ethics objection to the meeting I understand the conversation will not involve non-public or procurement sensitive information It appears the Secretary is willing to meet with (and is regularly seeking out) similarly situated [industry] individuals. This is appropriate interaction that does not trigger preferential treatment, endorsement, or other ethics concerns.

After receiving the SOCO opinion, a scheduler in Secretary Mattis' office confirmed the meeting between Secretary Mattis and Mr. Nadella.

On January 8, 2018, Secretary Mattis and Deputy Secretary Shanahan met with Mr. Nadella. Secretary Mattis told us that during their meeting, Microsoft executives were "very high on the cloud" and "saw themselves as our helpers" to "push us to the cloud."

According to Deputy Secretary Shanahan they had a “pretty high level” meeting about “Microsoft’s commitment to working on DoD type problems.” Deputy Secretary Shanahan said they discussed “innovation that would carry over into the Department of Defense and in particular ... virtual reality to do more simulation and training.” Deputy Secretary Shanahan said they talked about how Microsoft’s “virtual reality” does “much better training and simulation” for military personnel than what the DoD offered.

Meeting with Oracle

On February 14, 2018, Ms. Donnelly received an e-mail from an Oracle representative requesting a meeting between Secretary Mattis and Oracle CEO, Ms. Safra Catz. In the e-mail, the Oracle representative wrote,

Next week [Ms. Catz,] will be in D.C. and would like to [sic] opportunity to meet with Secretary Mattis to discuss his modernization agenda, share some insight from her experience at Oracle, and explore having him out to visit the Oracle team ... she will be in town 21, 22, and 23 Feb ... if Secretary Mattis is unavailable, [Ms. Catz] would be honored to meet with Deputy Secretary Shanahan.

On February 15, 2018, Ms. Donnelly coordinated Oracle’s request e-mail through Mr. Sweeney. In her e-mail, Ms. Donnelly wrote, “Can [Under Secretary Lord] make this work? It is important that Oracle be heard at a high level and SD [Secretary Mattis] is out [on official foreign travel] and DSD [Deputy Secretary Shanahan is out] too.” Mr. Sweeney requested that Under Secretary Lord be available if both Secretary Mattis and Deputy Secretary Shanahan were unable to attend the meeting.

On February 21, 2018, Deputy Secretary Shanahan’s staff confirmed his availability to meet with Ms. Catz. He and Under Secretary Lord met with Ms. Catz on February 22, 2018. Deputy Secretary Shanahan told us they had high level discussions about Oracle’s capabilities and the investments Oracle asserted it was making in technology. Deputy Secretary Shanahan said he recalled Ms. Catz saying, “Here’s what we’re doing in Oracle. Here’s how we’re committed to these technologies. Here’s the work that’s been done with the Department [DoD].” He told us that Oracle provided him a good education on their capabilities, explaining that they have been around for many years. Deputy Secretary Shanahan told us that he and Ms. Catz did not discuss DoD contracts during the meeting.

j. Secretary Mattis’ Financial Interests and Influence on the JEDI Cloud Procurement

We asked Secretary Mattis about his financial interests in any entities involved with the JEDI Cloud procurement. He told us that he did not have any financial relationship with the entities mentioned in complaints we received, specifically C5 Capital or SBD Advisors. Secretary Mattis stated that C5 Capital did pay for his airfare and hotels when he traveled to support the previously described British wounded warrior hospital initiative prior to becoming Secretary of Defense; however, he was not a C5 Capital employee, and he never accepted or expected any salary compensation from them for his wounded warrior work.

We also asked witnesses about Secretary Mattis' role in the JEDI Cloud procurement and whether he influenced the procurement in any way. For example, one witness, an attorney who advised the PCO and CCPM on JEDI Cloud procurement matters, told us Secretary Mattis had no direct influence in JEDI Cloud procurement decisions. This witness said she was not aware of any relationship between Secretary Mattis, SBD Advisors, C5, or Amazon. The witness also said she never heard Secretary Mattis say anything about Amazon. Further, this witness noted that Secretary Mattis did not have access to non-public JEDI Cloud procurement information.

The PCO told us she had no direct involvement with Secretary Mattis regarding the acquisition. The PCO said she never heard Secretary Mattis say anything about Amazon or any other participants in the procurement and the PCO was not aware of any conversation Secretary Mattis had that could have affected the procurement. The PCO told us she thought it was "absolutely ridiculous" for anyone to say or believe Secretary Mattis improperly participated in the procurement.

The DDS Director told us that Secretary Mattis "never once mentioned Amazon" to him during Secretary Mattis' tenure. The Director said he "never heard [Secretary Mattis] say a thing about any [potential JEDI Cloud procurement] competitor." The Director said Secretary Mattis "did not participate" in any of the JEDI Cloud procurement activities.

k. OIG Conclusion - Secretary Mattis

We did not substantiate any of the allegations regarding Secretary Mattis. We determined that Secretary Mattis did not violate any ethics agreements or ethical obligations in scheduling and meeting with industry leaders, and we found no evidence that he had undisclosed financial ties to C5 Capital or Amazon.

With respect to financial disclosures, as described above, we found that Secretary Mattis submitted his required OGE 278s at nomination and throughout his tenure as Secretary of Defense.

Regarding the allegation that Secretary Mattis had a financial relationship to Amazon through C5 Capital, Secretary Mattis told us that C5 Capital paid for his travel expenses in support of the 6th Duke of Westminster's British wounded warrior hospital initiative. We determined that this reimbursement was not reportable under OGE rules on Secretary Mattis' OGE-278e when he became Secretary because he was in a retired military status at the time and was not a Government employee when he worked on the hospital initiative. We found no evidence that Secretary Mattis received income from C5 Capital for his wounded warrior initiative support.

We found no evidence that Secretary Mattis gave preferential treatment to Amazon by meeting with Amazon leaders. We determined that Secretary Mattis and his staff met with a wide variety of industry leaders, including Amazon, Microsoft, Google, Apple, and others, to educate himself on data security as well as to seek suggestions for recruiting and retaining talent in the DoD. Additionally, although Secretary Mattis did not meet personally with Oracle's CEO because he was on official foreign travel on the proposed date, Deputy Secretary Shanahan and Under Secretary Lord, the two officials Oracle said Ms. Catz would want to meet with if Secretary Mattis were unavailable, met with Ms. Catz and engaged in discussions about cloud technology. In both Secretary Mattis' and Deputy Secretary Shanahan's policy memorandums regarding engagements with industry, they encouraged DoD leaders to engage and work with industry in a fair, impartial, and transparent manner where there was mutual interest, because this helped industry make informed business decision that would help the DoD. We

found no evidence that his meetings with Amazon differed in substance from similar meetings with other industry leaders, or were otherwise inappropriate.

In addition, although complaints we received asserted that Ms. Donnelly gave Amazon greater access to Secretary Mattis than to other industry leaders, we found that Ms. Donnelly deferred scheduling requests to Mr. Sweeney for screening and final decisions whether the invitation would be presented to Secretary Mattis. We present our findings regarding Ms. Donnelly's role in more detail later in this report.

With respect to meetings with industry leaders, Secretary Mattis' staff screened the invitations and sought ethics opinions to avoid potential ethics conflicts. Secretary Mattis met with industry leaders and potential cloud service providers who requested informational meetings with him to the extent his schedule permitted. On occasions when he could not attend, such as the meeting Oracle officials requested, his staff ensured that Deputy Secretary Shanahan or another senior leader was available to represent the DoD in his stead. We concluded that the meetings Secretary Mattis held with industry leaders complied with the FAR 15.201, and he issued policy memorandums to DoD personnel to hold similar meetings compliant with FAR guidelines.

In sum, we concluded that, contrary to the allegations, Secretary Mattis did not violate any ethics agreements or ethical obligations relating to the cloud adoption initiative or his meetings with industry leaders.

4. Ms. Sally B. Donnelly

The complaints we received alleged that Ms. Donnelly had "connections" to Amazon and its partner, C5 Capital, through her former company, SBD Advisors, and that Ms. Donnelly failed to disclose on her new entrant OGE Form 278e a payment from SBD Advisors in excess of \$1 million. According to the complaints, Ms. Donnelly allegedly received this payment after she began working for the DoD and did not disclose it until after she departed the DoD to form a new business venture. The complaints also alleged that Ms. Donnelly provided preferential treatment to Amazon by granting Amazon officials greater access to meetings with Secretary Mattis than she did for Amazon's competitors.¹⁵¹ The complaints further alleged that Ms. Donnelly should have disqualified herself from participating in the JEDI Cloud procurement because of her prior associations with Amazon, SBD Advisors, and C5 Capital.

a. Background

Ms. Donnelly first entered Government service in 2007 as the Special Assistant to the Chairman of the Joint Chiefs of Staff. From 2010 through 2012, Ms. Donnelly served as the head of U.S. Central Command's (USCENTCOM) Washington, D.C., satellite office.¹⁵²

In February 2012, Ms. Donnelly left USCENTCOM and founded SBD Advisors, LLC, an international security consulting firm providing strategic advice to companies and organizations. C5 Capital became a client of SBD Advisors after Mr. Pienaar formed C5 Capital in 2014.

¹⁵¹ We address this allegation earlier in this report in the Secretary Mattis subsection.

¹⁵² Secretary Mattis commanded U.S. Central Command as a U.S. Marine Corps General from August 2010 through March 2013.

Ms. Donnelly told us that on one occasion she traveled to the Middle East and worked with Mr. Pienaar in support of the 6th Duke of Westminster's initiative to establish Britain's Defence and National Rehabilitation Centre, a hospital for British wounded warriors. As noted earlier in this report, Secretary Mattis also participated in this same wounded warrior hospital initiative after his retirement from military service.

In 2015, AWS hired Ms. Donnelly's SBD Advisors firm to perform consulting services. Ms. Donnelly told us that using her prior experiences working at USCENTCOM and with the Joint Chiefs of Staff, she advised AWS on understanding how the DoD operates.

In December 2016, Ms. Donnelly informally helped Secretary Mattis during his Senate pre-confirmation process. As a national security professional with an understanding of the Pentagon and the DoD, Ms. Donnelly assisted Secretary Mattis in coordinating and preparing for his testimony during Senate Armed Services Committee hearings.

On January 19, 2017, Ms. Donnelly divested her financial interest in SBD Advisors and on January, 21, 2017, began a position as Secretary Mattis' Senior Advisor.

Table 7 lists a chronology of significant events related to Ms. Donnelly and her financial disclosures and divestments.

Table 7. Chronology of Significant Events Related to Ms. Donnelly's Financial Disclosures and Divestments.

Date	Event
2007- 2010	Ms. Donnelly works as Special Assistant to the Chairman of the U.S. Joint Chiefs of Staff.
2010 - 2012	Ms. Donnelly works as head of U.S. Central Command's Washington, D.C., office.
Feb. 2012	Ms. Donnelly establishes SBD Advisors, LLC.
2014	SBD Advisors provides consulting services to new client, C5 Capital, led by Mr. Pienaar.
2014-2015	Travels to Middle East in support of Mr. Pienaar's collaboration with Secretary Mattis and the 6th Duke of Westminster to establish the Defence and National Rehabilitation Centre for British wounded warriors.
2015	AWS contracts with SBD Advisors to acquire consulting services.
Jan. 19, 2017	Ms. Donnelly sells her interest in SBD Advisors for a total of \$1,560,000; signs purchase and sales agreement to be paid in two installments of \$780,000; first installment to be paid within 2 weeks of the execution of the agreement; second installment to be paid within 6 months of the first installment; and receives an initial payment of \$390,000.*
Jan. 21, 2017	Ms. Donnelly enters the DoD as a Senior Advisor to the Secretary of Defense.
Mar. 2017	Ms. Donnelly receives a second partial payment of \$390,000 from the sale of SBD Advisors.
Mar. 29 – Apr. 1, 2017	Ms. Donnelly accompanies Secretary Mattis to the U.K. and attends a dinner with Secretary Mattis, Mr. Pienaar, and Amazon's Ms. Carlson.
Apr. 4, 2017	Ms. Donnelly signs President's ethics pledge honoring the restrictions and other provisions in EO 13770.
May 17, 2017	Ms. Donnelly submits her new entrant OGE-278e disclosing the initial

	\$390,000 partial payment from the sale of SBD Advisors and a bonus payment of \$25,000 for the previous year.
Jul. 2017	Ms. Donnelly receives a third partial payment of \$390,000 from the sale of SBD Advisors.
Feb. 22, 2018	Ms. Donnelly submits her OGE-278T, "Public Financial Disclosure Report: Periodic Transaction Report and reports her omission of Time Inc. from her OGE-278e.
Mar. 2018	Ms. Donnelly receives a fourth and final partial payment of \$390,000 for the sale of SBD Advisors.
Mar. 9, 2018	Ms. Donnelly resigns from the DoD and files her termination OGE-278e, disclosing a combined total of \$1.17 million from the second, third, and final partial payments for the sale of SBD Advisors.
May 4, 2018	DoD SOCO reviews Ms. Donnelly's termination OGE Form 278e and concludes that she is in compliance with applicable laws and regulations.
Aug. 1, 2018	Ms. Donnelly and Mr. DeMartino establish the consulting firm Pallas Advisors.
Nov. 16, 2018	DoD SOCO provides post-Government employment advice to Ms. Donnelly in response to her request for a written opinion about employment activities.

* We determined Ms. Donnelly did not receive payment for SBD Advisors as indicated in the purchase and sales agreement. We detail the payment dates and specific amounts in other rows in this table and throughout this subsection of the report.

b. Ms. Donnelly's Financial Disclosures and Ethics Advice

We reviewed a "Purchase and Sale Agreement," dated January 19, 2017, which described Ms. Donnelly's sale of SBD Advisors. The Agreement quantified Ms. Donnelly's ownership of SBD Advisors in terms of "membership units." According to the Agreement, Ms. Donnelly owned 80 percent of all SBD Advisors membership units. On January 19, 2017, Ms. Donnelly sold all of her membership units to the purchaser for a total sale price of \$1,560,000. The Agreement stipulated that Ms. Donnelly would be paid for her sold membership units in two equal installments of \$780,000. According to Ms. Donnelly, she received an initial payment of \$390,000 from the purchaser before entering on duty with the DoD as Secretary Mattis' Senior Advisor. We present additional detail about the remaining three payments later in this subsection.

On January 21, 2017, Ms. Donnelly began working as Secretary Mattis' Senior Advisor, which was a non-career Executive Services appointment. Ms. Donnelly described to us her duties as advising Secretary Mattis on a range of DoD issues to "help advance the Secretary's interest and objectives." She said she assisted Secretary Mattis with internal and external DoD matters. Ms. Donnelly also facilitated strategic engagements with domestic and international groups and entities, including think tanks, private sector entities, non-governmental organizations and policy analysts. She also accompanied Secretary Mattis on official travel to advise him on international relations. According to Ms. Donnelly, in her role as Senior Advisor, she was not responsible for handling Secretary Mattis' scheduling, or screening his invitations to meetings and events for potential conflicts of interest or other ethical concerns. Secretary Mattis' Chief of Staff, Mr. Sweeney, screened invitations and decided which the staff should present to Secretary Mattis for consideration. Once an invitation had gone through Mr. Sweeney and Secretary Mattis decided he wanted to accept, Ms. Donnelly assisted him by engaging DoD SOCO for ethics opinions about the invitation and organizing his itinerary and travel, if required, for his attendance.

Sometime in March 2017, Ms. Donnelly received the second partial payment of \$390,000 from her sale of SBD Advisors membership units. We reviewed an e-mail from Ms. Donnelly's personal attorney reflecting that the remaining payments for the sale of SBD Advisors were to be disbursed to Ms. Donnelly in three equal installments of \$390,000 in March 2017, July 2017, and March 2018.

On April 4, 2017, Ms. Donnelly signed an "Ethics Pledge," in accordance with Presidential Executive Order 13770, "Ethics Commitments by Executive Branch Appointees," January 28, 2017. Ms. Donnelly pledged:

"I will not, for a period of 2 years from the date of my appointment, participate in any particular matter involving specific parties that is directly and substantially related to my employer or former clients, including regulations and contracts."

Ms. Donnelly said she consulted with DoD SOCO about her financial disclosures, and on May 17, 2017, she signed and submitted the new-entrant OGE 278e form to a DoD SOCO Attorney, as required upon re-entering Government service.¹⁵³ On the form, Ms. Donnelly disclosed her SBD Advisors prior consulting work for C5 Capital and AWS. She identified herself as an officer of SBD Advisors, a business that she owned from February 2012 to January 2017. Under Section 2, "Filer's Employment Assets & Income and Retirement Accounts," Ms. Donnelly listed SBD Advisors' value between \$1,000,001 and \$5,000,000 and disclosed that she had received a \$390,000 payment for the "partial sale" of divested membership units in the company. She also disclosed SBD Advisors bonus income of \$25,000 that she had received for her consulting work in 2016.

Ms. Donnelly told us that SOCO's "phrasing [of] partial sale [on the OGE 278e form] may be misconstrued." She explained to us that she sold her entire financial interest in SBD Advisors before she accepted the position of Senior Assistant to the Secretary of Defense. She said she believed the reference the SOCO attorney wrote on her OGE 278e to "partial sale" was SOCO attempting to explain to OGE that she only owned a part of SBD Advisors, 80 percent rather than 100 percent, when she sold it, and that she sold all of her part of the ownership units, which was 80 percent.

According to Ms. Donnelly, sometime in July 2017, she received a third partial payment of \$390,000 from the sale of her SBD Advisors membership units.

On August 23, 2017, a SOCO attorney reviewed Ms. Donnelly's previously submitted new-entrant OGE 278e and sent her an e-mail asking her to clarify information related to the sale of SBD Advisors, which she had reported under Section 2, "Filer's Employment Assets & Income and Retirement Accounts." The SOCO attorney wrote,

You listed income from this asset as \$390,000 during the reported timeframe, and valued your interest in asset between \$1,000,000 - \$5,000,000. In a comment from 1 May 2017 (not seen on the PDF), you identified that you signed a contract to sell the company and in 2016 SBD bought back part of the company

¹⁵³ The Ethics in Government Act of 1978 makes it mandatory for all Government senior officials to publicly disclose their financial and employment history. The Office of Government Ethics is responsible for administering the program. Newly appointed senior officials are required to complete a New Entrant Report when they assume duties of a position for which a public financial disclosure is required. For additional information, see <https://www.oge.gov/Web/278eGuide.nsf/Chapters/OGE%20Form%20278e?opendocument>.

from a co-owner valued at \$390,000. My questions about this asset include: do you still own any part of this company? If so, do you currently have an active role in this company and/or derive income from SBD? Further, if you do still own part of the company, is it an inactive status? Once we are able to certify your report we will send you standard cautionary guidance relating to your assets.

Ms. Donnelly replied to the SOCO attorney, "I do not own any part of the company." She stated that she would have SBD Advisors' legal counsel contact the SOCO attorney directly. On August 24, 2017, Ms. Donnelly referred the SOCO attorney to the SBD Advisors' legal counsel to address any remaining questions about her sale of SBD Advisors membership units. Ms. Donnelly's e-mail reiterated to the SOCO attorney that she sold her membership units in the company, no longer owned any part of the company, and had no financial interest in the company. She further explained to the SOCO attorney that she derived no income from SBD Advisors, played no role in the company, and had recused herself from any matters involving SBD Advisors and its clients the previous fall, well before she was a Government employee, when she prepared to assist then-General Mattis for his confirmation process to be Secretary of Defense.

Later that same day, the SOCO attorney spoke to SBD Advisors' legal counsel, who provided the SOCO attorney a copy of Ms. Donnelly's cumulative salary statement for 2017. On August 30, 2017, the SOCO attorney e-mailed Ms. Donnelly and another SOCO attorney in his office, stating,

I was able to speak with [SBD Advisors counsel] and she helped answer my questions and, as such, your OGE 278 has been certified. While review of your financial disclosure form did not reveal any specific conflicts, I wanted to take this opportunity to provide a quick review of the conflict of interest rules. Because your spouse provides consulting services for a defense contractor I have included some guidance that addresses your participation in matters involving [defense contractor.]

After resolving his questions with SBD Advisors' legal counsel, the SOCO attorney wrote on Ms. Donnelly's certified new entrant report OGE 278e, "Confirmed that this asset [SBD Advisors LLC] actually has \$0 value to filer as [Ms. Donnelly] no longer has any stake in the company [SBD Advisors]." The Deputy Designated Agency Ethics Official (DDAEO) annotated on the form to clarify that Ms. Donnelly "confirmed this was [the] total sale of [her] filer's partial interest." The SOCO attorney wrote a second note that Ms. Donnelly "earned an additional \$20,833 for work in CY [calendar year] 2017." The DDAEO further annotated on the form that Ms. Donnelly "confirmed that income received in 2017 was for work performed in 2016."

On February 22, 2018, Ms. Donnelly completed and submitted a required OGE-278 "Periodic Transaction Report" to amend an omission from her new entrant form, relating to work that she had done for Time, Inc. The omission was not related to Amazon, SBD Advisors, C5 Capital, or any other entity associated with the allegations regarding conflict of interest with the JEDI Cloud procurement.

Sometime during March 1-8, 2018, Ms. Donnelly received a fourth and final partial payment of \$390,000 from her sale of SBD Advisors membership units. On March 9, 2018, Ms. Donnelly resigned from the DoD and submitted an OGE 278e termination report to SOCO for review, as required. She subsequently signed this report on May 3, 2018. In Section 2 of this report, Ms. Donnelly disclosed she received an additional \$1.17 million (previously reported partial payments two, three, and four) from

the prior sale of her divested SBD Advisors membership units. Ms. Donnelly's attorney clarified to us that she received this \$1.17 million in three installment payments of \$390,000 each, in March 2017, July 2017, and March 2018.

We asked Ms. Donnelly about the sale of her SBD Advisors membership units, her conversations with SOCO ethics officials about her OGE 278e forms, and the income amounts she received from the sale. Ms. Donnelly told us she had a "number of conversations" with the SOCO attorney throughout the filing process. She drafted her new entrant OGE 278e and sent it to SOCO for review. She agreed on the final sale price before entering duty in the DoD, assuming that she would receive the agreed-upon payment shortly thereafter. She informed the SOCO attorney of her sales agreement, and the SOCO attorney certified that she had complied with all applicable disclosure laws and regulations. She also stated:

I don't recall exactly any advice besides their [SOCO] acceptance of what I wrote here [on her OGE 278e], and just to be clear, when I signed the agreement and had nothing to do with SBD before I walked into the government. The agreement said I would be paid over time I think \$390,000 which is on the first form, and then the rest over time.

An e-mail that the SOCO Director wrote to Ms. Donnelly and Mr. Sweeney on August 15, 2018, discussed payments Ms. Donnelly received from SBD Advisors. The e-mail included a document stating:

Ms. Donnelly filed her initial report in May 2017. At that time, DoD did not know the extent of the payment arrangements she had made in selling her company. However, when SOCO reviewed the report in August, Ms. Donnelly clarified entries on her report and confirmed that she had no ownership interest in SBD Advisors Ms. Donnelly disclosed on both her new entrant and termination financial disclosure reports that she had received payments from the sale of SBD Advisors. In a comment to her new entrant report she stated she signed a contract to sell SBD Advisors before joining the U.S. Government. She reported \$390,000 on her new entrant report as income from a partial sale and an additional \$1,170,000 as sale proceeds on her termination report. During review of her reports, she stated to SOCO that she received three payments of \$390,000 each in 2017 (total of \$1,170,000) on 3/10/17, 3/17, and 7/30/2017.

Mr. Sweeney told us that he signed Ms. Donnelly's OGE 278e after noting that SOCO had reviewed it. Mr. Sweeney said that although he signed Ms. Donnelly's OGE 278e as her supervisor, she actually worked directly for Secretary Mattis. He said he did not remember reviewing the disclosure form or discussing it with Ms. Donnelly or the SOCO reviewer. He said he had no knowledge of C5 Capital or of the details regarding Ms. Donnelly's sale of her interest in SBD Advisors.

Another SOCO attorney told us that the advice the SOCO certifying official and the AEDEO gave to Ms. Donnelly clarified that Ms. Donnelly had made a “sale of her partial interest” in SBD Advisors, rather than a “partial sale” of her whole interest in SBD Advisors. The SOCO attorney said, “typically there would be an entry under Part [3] [Filer’s Employment Agreements and Arrangements] that would say ‘I continue to be owed X amount from SBD [Advisors].’ So, as a technical matter ... it may have been a misunderstanding [by the SOCO attorneys] on how [Ms. Donnelly] was supposed to report” the sale. Further, the attorney said Ms. Donnelly “clearly reported the payments in the next filing cycle” as required.

We asked Ms. Donnelly to explain the SBD Advisors consulting services she provided to AWS that she listed on her OGE-278e form. Ms. Donnelly told us that AWS hired SBD Advisors, between 2015 and 2016, to help AWS understand better how the DoD operated. She stated that AWS sold products and services to government and other public sector entities and at the time the DoD was a potential AWS customer. Ms. Donnelly told us that she did not remember having any specific discussions with SOCO about AWS, but she disclosed AWS as a source of income on her new-entrant OGE 278e form as required.

With regard to C5 Capital and Mr. Pienaar, Ms. Donnelly told us that C5 Capital was a U.K.-based investment firm that was looking for better connections with the United States’ national security community. She said her consulting with C5 Capital started after she left USCENTCOM in 2013 and ended when she returned to the DoD in 2017 as Secretary Mattis’ Senior Advisor. Ms. Donnelly told us that she did not remember having any specific discussion with SOCO about C5 Capital, but she also noted that she disclosed C5 Capital as a source of income on her new-entrant OGE 278e form as required.

c. Ms. Donnelly’s Engagements with Amazon

The complaints alleged that Ms. Donnelly provided preferential treatment to Amazon by granting Amazon official’s greater access to meetings with Secretary Mattis than she gave to Amazon’s competitors.

In the Secretary Mattis subsection of this report, we presented in detail the facts we found about Secretary Mattis’ dinners and meetings with industry leaders, including Amazon, Google, Apple, Microsoft, and Oracle, among others. We do not repeat those details in full in this subsection for Ms. Donnelly, but we do present again here some details that pertain to actions she took to facilitate industry executives’ access to Secretary Mattis. Secretary Mattis told us that Ms. Donnelly accompanied him to most of his meetings and dinners, including the New York and U.K. trip we discussed in this report’s subsection for Secretary Mattis.

According to witnesses we interviewed, Ms. Donnelly was not Secretary Mattis’ scheduler, nor was she the decision-maker regarding his acceptance of meeting or dinner invitations. Ms. Donnelly explained to us that within Secretary Mattis’ front office there was a process where Mr. Sweeney reviewed all invitations. Secretary Mattis’ staff, including Ms. Donnelly, sought and received input on invitations and trip itineraries from various offices within the Department, including SOCO ethics officials, to determine if Secretary Mattis’s attendance at meetings or dinners fulfilled legal and ethical Government purposes. Mr. Sweeney made the final decisions on which invitations the staff would present to Secretary Mattis for his consideration. When Secretary Mattis signaled he wanted to accept

an invitation that SOCO had reviewed, Mr. Sweeney or Secretary Mattis' scheduler would coordinate the timing and logistics of his attendance.

As an example of Ms. Donnelly's actions regarding Amazon access to Secretary Mattis, on April 17, 2017, an Amazon representative e-mailed Mr. Anthony DeMartino, former Chief of Staff to Deputy Secretary Shanahan and former Deputy Chief of Staff to Secretary Mattis, and asked for an April 27, 2017, meeting between Secretary Mattis and Mr. Bezos. The Amazon representative also asked for Ms. Donnelly's contact information, since she had accompanied Secretary Mattis to the U.K. dinner that Ms. Carlson also attended. Mr. DeMartino subsequently consulted Ms. Donnelly about Amazon's request. On April 18, 2017, Ms. Donnelly sent Mr. DeMartino an e-mail stating, "We should stand back and let the [Secretary of Defense's] schedule process work—we should take no action to help. Not our place, not proper." Mr. DeMartino replied to Ms. Donnelly, "Roger. My thoughts exactly."

Later on April 18, 2017, Mr. Sweeney received an e-mail from a staff member alerting him to the e-mail the Amazon representative had sent to Mr. DeMartino. The staff member also wrote that the Amazon representative "called me" requesting to schedule a meeting between Secretary Mattis and Mr. Jeff Bezos. In an e-mail response to the staff member, Mr. Sweeney wrote, "let's work this [invitation] through the [screening] machine."

As noted above in the Secretary Mattis section of this report, Admiral Faller told us that "the machine" was the informal name given to a small group of officials in Secretary Mattis' office who coordinated or completed actions, reviewed documents, and made recommendations. He said that sometimes "the machine" reviewed requests to get on Secretary Mattis' schedule, but that it worked on more than just scheduling.

On April 19, 2017, the staff member replied to Mr. Sweeney's e-mail, "no objections from the machine on this potential meeting; we think this would be a good meeting to arrange if feasible." On April 20, 2017, Mr. Sweeney e-mailed Ms. Donnelly and Admiral Faller, informing them, "we can make this [meeting with Mr. Bezos] work." He asked them to coordinate the meeting with Secretary Mattis before they committed him to the meeting with Mr. Bezos.

On April 21, 2017, Admiral Faller and Ms. Donnelly received an e-mail from a staff member who was "circling back to see if we want to accept the office call with Jeff Bezos of Amazon and Blue Origin." On April 23, 2017, Ms. Donnelly sent an e-mail to Admiral Faller that listed reasons why Secretary Mattis should meet with Mr. Bezos. She wrote,

- (1) He [Mr. Bezos] asked via (Teresa Carlson at the dinner in London.),
- (2) Amazon is one of the most successful start ups in the history of the US economy
- (3) Amazon has revolutionized delivery and consumer service
- (4) Amazon's success based on technical excellence and security. The Amazon cloud is the foundation of all Amazon's businesses and allows unprecedented speed. Amazon's cloud is one of four hyperscale cloud providers (the others are Google, Facebook, Microsoft). Amazon's focus on security...was so convincing to CIA that the Agency two year ago took the surprising step of migrating the bulk of its secure work to Amazon
- (5) Bezos has built from scratch a space company (Blue Origin) which, along with SpaceX, is transforming space flight

(6) Bezos owns the Washington Post (7) Bezos serves on the Defense Innovation Board.

Ms. Donnelly told us that Mr. Sweeney was the authority regarding scheduling Secretary Mattis' meetings. She said Mr. Sweeney was the "decider of who gets in meetings, and who goes to meetings [with the Secretary of Defense]." Admiral Faller told us that requests to meet with Secretary Mattis went through Mr. Sweeney. Mr. Sweeney confirmed to us that managing Secretary Mattis' schedule was one of his primary duties. Mr. Sweeney said he did not remember this April 2017 correspondence about setting up a meeting with Mr. Bezos. We reviewed e-mail, calendars, schedules, travel itineraries, and asked witnesses, but we found no evidence that this proposed April 2017 meeting between Secretary Mattis and Mr. Bezos took place.

Secretary Mattis told us that during the summer of 2017 he had been reading and thinking a lot about West Coast technology companies, DoD's data security needs, and how industry business models could help change DoD's corporate culture to "risk-taking in terms of research and development." He said that Ms. Donnelly recommended that he travel to the West Coast and talk to industry executives about these ideas. He said that Ms. Donnelly talked with him about companies such as Amazon, Microsoft, Apple, and Google because she believed all of them had a lot to offer to the DoD in ideas and capabilities.

Secretary Mattis asked Ms. Donnelly to organize the trip. Ms. Donnelly and other staff members organized Secretary Mattis' August 2017 trip to Seattle, Washington, and Silicon Valley, California, to meet with executives from Amazon, Microsoft, Google, and Apple. The purpose of the trip was to help him better understand cloud capability and data security. We presented extensive details about this trip in the Secretary Mattis section of this report. Ms. Donnelly facilitated Secretary Mattis's meetings with the CEOs of Amazon, Apple, Google, and Microsoft during this trip, but due to illness she did not accompany him. Ms. Donnelly also had secured a meeting for Secretary Mattis with Microsoft officials; however, the meeting with Microsoft in the Seattle area was dropped from the itinerary on the day it was to occur because the "CEO [Mr. Satya Nadella] wasn't there at the time."

With respect to Secretary Mattis' meeting with Mr. Bezos, on August 7, 2017, an Amazon representative e-mailed members of Secretary Mattis' staff an agenda listing the proposed topics, discussion questions, and schedule for Secretary Mattis' visit. A DoD staff member who received that e-mail from Amazon forwarded it to Ms. Donnelly for her awareness of the scheduled events and to help Secretary Mattis prepare.

That same staff member forwarded similar meeting agenda information to Ms. Donnelly for the same purpose of preparing Secretary Mattis for meetings he would have with DIUx, Microsoft, and Google officials during the trip.

According to Secretary Mattis, Ms. Donnelly personally set up his August 11, 2017, meeting with Apple CEO Tim Cook in Silicon Valley, California.

We found no evidence that Ms. Donnelly served as a "gatekeeper" for Secretary Mattis or screened his meeting or dinner invitations to favor Amazon at the exclusion of its competitors, as alleged in the complaint we received. Mr. Sweeney told us he was the decision-maker for which invitations the staff would present to Secretary Mattis for consideration. Mr. Sweeney told us that

Secretary Mattis did not provide Amazon any special consideration. Mr. Sweeney added that Secretary Mattis' interest in meetings with the senior leaders of technology companies was to discuss corporate culture, technology, innovation, and DoD transformation. Ms. Donnelly's role in the invitation screening process was to submit an invitation to SOCO for ethics review after Mr. Sweeney had determined an invitation would go to Secretary Mattis for his consideration.

The complaints we received also asserted that Ms. Donnelly facilitated Secretary Mattis' trip to the U.K., in which he renewed his prior relationship with C5 Capital's Mr. Pienaar and met Amazon's Ms. Carlson for the first time. However, as the facts in the Secretary Mattis subsection demonstrated, Ms. Donnelly's role in facilitating the trip was to present to SOCO the invitation from British Army General Lamb and the proposed trip itinerary for ethics review. The SOCO attorney identified no conflicts and had "no objections" to Secretary Mattis's travel to engage with the attendees. The evidence we found showed that Ms. Donnelly followed staff protocol regardless of who requested invitations to meet with Secretary Mattis. As discussed above, when Amazon representatives contacted Mr. DeMartino for assistance in setting up the April 2017 meeting between Secretary Mattis and Mr. Bezos in Washington, D.C., Ms. Donnelly told Mr. DeMartino that they should let the screening process through Mr. Sweeney run its course.

d. Ms. Donnelly's Role in the JEDI Cloud Procurement

The complaints also alleged that Ms. Donnelly should have disqualified herself from participating in the JEDI Cloud procurement because of her prior associations with AWS, SBD Advisors, and C5 Capital.

In July 2018, the JEDI Cloud PCO conducted an investigation to determine if Ms. Donnelly had a conflicting financial interest in AWS based on her prior SBD Advisors consulting services to AWS. The PCO investigation also assessed the impact of such conflict, if any, on the integrity of the JEDI Cloud procurement.

In a July 23, 2018, memorandum, the PCO noted that prior to accepting the position of Senior Advisor to Secretary Mattis, Ms. Donnelly had provided consulting services to AWS while she was an owner of SBD Advisors; however, the PCO concluded that Ms. Donnelly had no involvement in any aspect of the JEDI Cloud procurement. The PCO's investigation stated:

Ms. Donnelly had no involvement in the reviewing or drafting of the draft solicitation package, the Acquisition Strategy, Business Case Analysis, or other pre-decisional sensitive documents relative to the JEDI Cloud acquisition. Ms. Donnelly worked with SOCO throughout her DoD employment to ensure compliance with all applicable ethics rules.

The PCO told us, ". . . because [Ms. Donnelly] worked with a company that worked with Amazon with some degree of separation doesn't necessarily necessitate a conflict in you helping transition a DoD official [Secretary Mattis]." The PCO told us she never developed any information during her investigation that caused her to question Ms. Donnelly's impartiality concerning AWS.

In response to complaints from Oracle questioning the integrity of the JEDI Cloud procurement before source selection, the Government Accountability Office (GAO) also reviewed whether Ms. Donnelly should have disqualified herself from participating in the JEDI Cloud procurement because of her prior associations with AWS, SBD Advisors, and C5 Capital. The GAO agreed with the PCO's findings that Ms. Donnelly was not involved in any way with the JEDI Cloud procurement. We provide more detailed information about the GAO decision in Appendix A to this report.

We also determined that, as Senior Advisor to Secretary Mattis, Ms. Donnelly participated along with other staff members in organizing meetings with a variety of industry executives that Mr. Sweeney had screened and SOCO had reviewed for ethics considerations. All of the meetings she helped the staff organize with Amazon, Google, Apple, and other industry leaders took place during the spring and summer of 2017 before Deputy Secretary Shanahan launched DoD's Cloud Adoption initiative in September 2017, which later became the JEDI Cloud procurement in 2018.

We asked Ms. Donnelly how her duties as Secretary Mattis' Senior Advisor related to the JEDI Cloud procurement. She said:

In my role, I had nothing to do with acquisitions, contracting, procurement, requirement writing I never had anything to do with those on any product or service in the Department I had nothing to do with any of the sort of building blocks of contracting or procurement, or requirements. I don't recall having a specific recusal letter or discussion.

Ms. Donnelly told us, with regard to the JEDI Cloud procurement:

I played no role in any acquisition, contract, or procurement, or requirement writing I had none of the expertise, the background it wasn't my job. Frankly ... I don't understand the process. I'm not a contracting, procurement, or requirements expert. So, that assertion on its face is completely inaccurate. ... I reject the fact that I had a conflict of interest.

We also asked members of the CESG, DDS, CCPO, SOCO attorneys, the PCO, and other witnesses about Ms. Donnelly's role in the JEDI Cloud procurement. All of the witnesses told us that Ms. Donnelly was not involved and had no role in any of the JEDI procurement meetings and activities.

Under Secretary Lord, who chaired the CESG during fall 2017, told us that Ms. Donnelly was neither involved in nor played any role in the JEDI procurement. Similarly, Mr. John Bergin, a former CESG member and the current Deputy Assistant Secretary of the Army for Financial Information, told us that Ms. Donnelly never participated in any CESG meetings. He also told us that Ms. Donnelly was not involved in decisions and he did not have any interactions with Ms. Donnelly regarding the JEDI Cloud procurement.

Mr. Daigle, the former DoD CAPE Director, told us he did not interact with Ms. Donnelly regarding the JEDI Cloud procurement. He said that Ms. Donnelly was not involved and that she did not play a role in any of the JEDI Cloud procurement activities.

The DDS General Counsel told us that Ms. Donnelly played no role in the JEDI Cloud procurement. She was never involved in CESG meetings, Industry Day, or any working groups. The

DDS General Counsel further stated that Ms. Donnelly did not participate in any of the 27 acquisition activities in the query we sent to each witness. The DDS Director told us that Ms. Donnelly did not attend any CESG meetings and said that she was not involved in the JEDI procurement.

e. Ms. Donnelly's Post-Government Employment

The complaints we received also alleged that when Ms. Donnelly left the DoD, she formed Pallas Advisors with Mr. Anthony DeMartino, the former Deputy Chief of Staff to Secretary Mattis, and hired Mr. Daigle, who as the CAPE Director (DCAPE) had been a key DoD senior official intimately involved in the JEDI Cloud procurement. According to these complaints, Ms. Donnelly, Mr. DeMartino, and Mr. Daigle working together after leaving the DoD was somehow improper.

We determined that on March 9, 2018, Ms. Donnelly resigned her position as Senior Advisor and left the DoD. On August 1, 2018, Ms. Donnelly and Mr. DeMartino co-founded Pallas Advisors. According to Ms. Donnelly, Pallas Advisors is a “national security consulting firm.” The company’s website stated that Pallas Advisors specializes in “navigating complex national and international security dynamics,” and “provides insight into how governments operate.”

From August 1, 2017 to May 2019, Mr. Daigle served as the CAPE Director. Mr. Daigle told us that approximately 1 month before his resignation from the DoD, Mr. DeMartino approached him and they began conversing about Mr. Daigle’s future plans. Mr. Daigle said he was looking to leave the DoD and was not sure about his employment plans after his departure. According to Mr. Daigle, he and Mr. DeMartino had worked closely together and had become pretty good friends. He said Mr. DeMartino told him, “Hey, just come over and work with us [at Pallas Advisors] for [a] little while. You know we’ll cover your income We’ll give you a paycheck [after leaving the DoD] while you figure out what you want to do on a more permanent basis.”

On April 5, 2019, Mr. Daigle recused himself from participating in matters involving Pallas Advisors. On May 17, 2019, Mr. Daigle resigned from the DoD.¹⁵⁴

Sometime before November 16, 2018, Ms. Donnelly had requested a written opinion from SOCO regarding “the legal propriety of [Ms. Donnelly] undertaking certain post-Government employment activities.” On November 16, 2018, SOCO provided Ms. Donnelly with written guidance. In the memorandum to her, SOCO highlighted that Ms. Donnelly had informed them that she did not have “definitive plans for post-Government activities” and had requested from SOCO general advice about post-Government employment prohibitions, which SOCO provided. SOCO also provided Ms. Donnelly advice on procurement integrity and Section 847 of the FY 2008 National Defense Authorization Act, criminal representation bans, anti-lobbying restrictions, the Ethics Pledge, restrictions on representing foreign entities, the disclosure of non-public information, and compliance with post-Government employment rules.¹⁵⁵

In its memorandum, SOCO advised Ms. Donnelly that she “must make all employment decisions, including hiring, based on a candidate’s competence, experience, and qualifications.” Ms. Donnelly told

¹⁵⁴ We discuss allegations involving Mr. Daigle in further detail in a later subsection of this report.

¹⁵⁵ We were unable to definitively identify the specific date Ms. Donnelly requested the general post-Government ethics opinion.

us that she uses the memorandum as her “guide star.” She said that she refers to the letter, but did not “believe that [she] was restricted in the letter” from hiring former DoD personnel such as Mr. Daigle. Ms. Donnelly also told us that she did not have a financial relationship with any cloud providers and that “there were no restrictions” regarding her hiring a former Government employee who had been involved in the JEDI Cloud procurement.

The SOCO attorney who provided Ms. Donnelly’s post-Government employment advice told us that Federal ethics laws do not restrict an employer from hiring former Government employees in general, nor do they prohibit former Government employees from going to work for any company they choose. The SOCO attorney clarified to us that the laws do not prevent an employee from working for a given employer, with one exception, the Procurement Integrity Act, which restricts employees involved in certain procurement functions from accepting employment with an offeror in that procurement for 1 year. According to the Federal Procurement Data System (FPDS), Pallas Advisors was not an offeror or contractor in a DoD procurement, and therefore the Procurement Integrity Act restriction did not apply to Pallas or its hiring of Mr. Daigle.

f. OIG Conclusion - Ms. Donnelly

We did not substantiate any of the allegations regarding Ms. Donnelly. We did not find evidence that she failed to disclose payments from SBD Advisors on her OGE 278e, provided preferential treatment to Amazon, or improperly participated in the JEDI Cloud procurement because of her prior associations with Amazon, SBD Advisors, and C5 Capital.

We found that the DoD SOCO worked closely with Ms. Donnelly on her OGE 278e form submissions and that SOCO determined that Ms. Donnelly complied with her ethics agreements and her ethical obligations regarding financial disclosures. Ms. Donnelly legally divested all of her SBD Advisors membership units before she accepted the position as Senior Advisor to Secretary Mattis, and partial payments for selling her stake in the company continued to come to her during her DoD employment. She disclosed those payments on her OGE 278 forms, as required.

Further, we found no evidence that Ms. Donnelly gave Amazon officials greater or more frequent access to meetings with Secretary Mattis than Amazon’s competitors who requested to meet with him. On the contrary, we found that Ms. Donnelly encouraged and helped organize Secretary Mattis’ August 2017 trip to Washington and California to meet with officials from Amazon, Microsoft, Apple, and Google so he could hear perspectives from each company on corporate cultures, innovative technology risk-taking, and cloud data security.

Moreover, Ms. Donnelly was not Secretary Mattis’ scheduler, and did not screen his invitations to decide which invitations should be presented to him for consideration. Mr. Sweeney, the Chief of Staff, had that duty. Once an invitation came to Secretary Mattis, Mr. Sweeney or Secretary Mattis’ scheduler assisted him by requesting ethics opinions before Secretary Mattis accepted invitations. After he accepted invitations, Ms. Donnelly assisted the staff in organizing and facilitating his attendance and any associated travel, which did not favor Amazon or any other company.

We also found no evidence that Ms. Donnelly was involved in or influenced any aspect of the JEDI Cloud procurement. She did not participate in drafting or reviewing any procurement-related documents, was not a member of the CESG or any factor evaluation panels. None of the witnesses told

us she participated in any of the 27 common acquisition activities we queried them about, and none ever met or engaged with her on the procurement. The PCO investigation and GAO review each reached the same conclusion that Ms. Donnelly played no role in the JEDI cloud procurement, and her prior consulting ties with AWS and C5 Capital while she owned SBD Advisors did not affect the integrity of the procurement.

With regard to financial disclosures and SBD Advisors consulting relationships with C5 Capital and AWS, we found that Ms. Donnelly sold her SBD Advisors membership units and properly annotated both her initial and termination financial disclosure forms to reflect the total proceeds she received from the sale of SBD Advisors. She sought ethics advice on how to complete this documentation, and submitted the appropriate reports as required. In addition to the disclosure of SBD Advisors, she submitted a Periodic Report consistent with OGE procedure to disclose financial information involving an entity not related to AWS or SBD Advisors and had no connection to the JEDI Cloud procurement. We likewise found no evidence that she had an ongoing or undisclosed financial relationship with C5 Capital or Amazon and its affiliates that would have required her to recuse from any of her official duties during her service in the DoD. We also found no evidence from witnesses, Internet searches, or in Federal procurement records that the company she co-founded with Mr. DeMartino, Pallas Advisors, has any involvement with any cloud service providers or any contracts with the DoD.

In sum, we determined that Ms. Donnelly did not violate any ethical agreements and obligations regarding OGE financial disclosures, did not give preferential treatment to Amazon officials or restrict access to Secretary Mattis for other industry leaders, and did not violate any post-Government employment standards in creating Pallas Advisors and hiring Mr. Daigle.

5. Mr. Anthony DeMartino

We received complaints that prior to his DoD employment, Mr. DeMartino provided consulting services to AWS and failed to disclose this on required Government ethics documents. Mr. DeMartino also allegedly ignored a “clear directive” from ethics officials not to participate in any matters related to Amazon without SOCO clearance. According to the complaints, Mr. DeMartino allegedly influenced key JEDI Cloud procurement decisions in a manner that favored AWS. When he left the DoD, Mr. DeMartino and Ms. Donnelly, both with allegedly undisclosed financial interests in Amazon, formed Pallas Advisors and hired Mr. Daigle, who had been intimately involved in the JEDI Cloud procurement. The complaints suggested that forming Pallas advisors and hiring Mr. Daigle was improper because all three allegedly had been involved in the JEDI Cloud procurement until their departures from the DoD.

a. Background

From December 2014 to January 2017, Mr. DeMartino was Managing Director of SBD Advisors, LLC (SBD Advisors). As described earlier in this report, SBD Advisors is an international security consulting firm providing strategic advice to companies and organizations. Ms. Donnelly also worked at SBD during this time.

In December 2016, after Mr. Mattis was nominated to be the Secretary of Defense, Mr. DeMartino worked with Ms. Donnelly to assist Mr. Mattis informally with his nomination and confirmation process. On January 19, 2017, Ms. Donnelly sold her interest in SBD Advisors, and

accepted a position as Secretary Mattis' Special Assistant. On January 26, 2017, Mr. DeMartino began work as the Deputy Chief of Staff to Secretary Mattis.

Beginning in May 2017, Mr. DeMartino also assisted Deputy Secretary Shanahan during his nomination process. After he was confirmed in July 2019, Deputy Secretary Shanahan selected Mr. DeMartino as his Chief of Staff. Mr. DeMartino continued to serve in a dual capacity as Secretary Mattis' Deputy Chief of Staff and as Deputy Secretary Shanahan's Chief of Staff.

As the Deputy Chief of Staff, Mr. DeMartino advised Secretary Mattis on a variety of issues, helped develop and coordinate implementation of the Secretary's three primary lines of effort, and led the Department's initial talent management search - helping to build the Secretary's team of senior national security professionals. According to Mr. DeMartino, he regularly provided strategic advice and assistance to Secretary Mattis and Deputy Secretary Shanahan, and focused on the daily operations of the OSD staff and the DoD's business reform efforts.

As the initial Chief of Staff to Deputy Secretary Shanahan, Mr. DeMartino assisted him during his confirmation process and advised him and other senior Department officials in the development of the National Defense Strategy, the Nuclear Posture Review, and development of the Department's FY 2019 budget request.

Table 8 lists a chronology of significant events related to Mr. DeMartino and the JEDI Cloud procurement.

Table 8. Chronology of Significant Events Related to Mr. DeMartino.

Date	Event
Dec. 2014 – Jan. 2017	Mr. DeMartino serves as a managing director of SBD Advisors.
Jan. 26, 2017	Mr. DeMartino becomes the Deputy Chief of Staff to the Secretary of Defense.
Feb. 6, 2017	Mr. DeMartino pledges that for a period of 2 years from his date of appointment, he will not participate in any particular matter involving specific parties that is directly and substantially related to his former employer or former clients, including regulations and contracts.
Apr. 18, 2017	Mr. DeMartino submits his New Entrant OGE 278e.
Apr. 24, 2017	DoD SOCO reviews Mr. DeMartino's OGE 278e and issues him a "Cautionary Notice" for a 1-year period concerning participating in matters related to Amazon.
Apr. 24, 2017	Mr. DeMartino informs an Amazon representative of his 1-year restriction.
Jul. 19, 2017	Deputy Secretary Shanahan selects Mr. DeMartino as his Chief of Staff. Mr. DeMartino also continues to serve as Secretary Mattis' Deputy Chief of Staff.
Sep. 13, 2017	Deputy Secretary Shanahan issues the "Accelerating Enterprise Cloud Adoption" memorandum establishing the CESG.
Jan. 8, 2018	Deputy Secretary Shanahan issues the "Accelerating Enterprise Cloud Adoption Update" memorandum directing the DoD Chief Management Officer (CMO) to lead the acquisition, establish a budget line, and select a cloud acquisition Program Manager (PM).
Mar. 7, 2018	The DoD holds JEDI Cloud procurement Industry Day.
May 31, 2018	Mr. DeMartino submits his OGC-278e for 2018.
Jun. 22, 2018	A DoD ethics officials reviews Mr. DeMartino's OGE-278e and concludes Mr. DeMartino was in compliance with applicable laws and regulations.
Jun. 22, 2018	Deputy Secretary Shanahan issues a "DoD Cloud Update" that directs the CIO to lead all DoD enterprise cloud initiatives including the JEDI Cloud procurement.
Jul. 2, 2018	Mr. DeMartino submits his termination OGE 278e.
Jul. 6, 2018	Mr. DeMartino resigns from the DoD.
Aug. 1, 2018	Mr. DeMartino and Ms. Donnelly establish Pallas Advisors.

b. Mr. DeMartino's Financial Disclosures and Ethics Advice

Mr. DeMartino became the Deputy Chief of Staff to the Secretary of Defense on January 26, 2017. On February 6, 2017, Mr. DeMartino signed an "Ethics Pledge," in accordance with Presidential Executive Order 13770, "Ethics Commitments by Executive Branch Appointees," January 28, 2017. Mr. DeMartino pledged:

"I will not, for a period of 2 years from the date of my appointment, participate in any particular matter involving specific parties that is directly and substantially related to my employer or former clients, including regulations and contracts."

On April 18, 2017, after assuming his duties as Secretary Mattis' Deputy Chief of Staff, Mr. DeMartino submitted his new entrant-OGE Form 278e. On the form, Mr. DeMartino identified himself as an employee of SBD Advisors from March 2015 to January 2017. Under Section 2, "Filer's Employment Assets & Income and Retirement Accounts," Mr. DeMartino disclosed that the value of his SBD Advisors 401K account, through Transamerica, was between \$15,001 - \$50,000, and that SBD

Advisors had paid him \$138,661 in salary and \$30,000 in “income from personal services.” In Section 3, “Filer’s Employment Agreements and Arrangements,” Mr. DeMartino disclosed that he was “[m]aintaining [my] retirement benefit plan with my former employer [SBD Advisors]. Neither I nor SBD Advisors continue to make contributions to this plan.” In Section 4, “Filer’s Sources of Compensation Exceeding \$5,000 in a Year,” Mr. DeMartino disclosed that AWS paid him more than \$5,000 for “consulting on business efficiencies,” and SBD Advisors paid him more than \$5,000 for working as “Managing Director responsible for running the day to day operations of the team and providing advice to the senior leadership of the firm.”

On April 24, 2017, after a detailed review of his OGE-278e, a SOCO Attorney issued Mr. DeMartino a “Financial Disclosure Report – Cautionary Notice.” The SOCO Attorney wrote:

you may have a regulatory prohibition under 5 C.F.R. §2635.502 on participating in matters where one of the entities for whom you served as a consultant during the last year is or represents a party to the matter. In particular, Amazon ... do[es] business with DoD, and therefore, you should be vigilant and consult with our office before participating in any matters involving ... [Amazon] until the one year period has expired,

Further, the SOCO Attorney provided Mr. DeMartino with possible actions he could take if his official duties required participating in matters in which SBD was involved, or represented a party. The possible actions were (1) disqualifying himself from personal or substantial participation in the matter, (2) asking for reassignment to duties that would not involve personal and substantial participation in the matter, or (3) seeking an individual ethics waiver.

On the same date Mr. DeMartino received the “Cautionary Notice” e-mail from SOCO, an Amazon employee e-mailed Mr. DeMartino requesting his assistance in scheduling a meeting between Secretary Mattis and Mr. Bezos. The Amazon employee wrote:

Hey Tony - Just left you a voicemail on your cell. There appears to be a disconnect between the Secretary's front office regarding the potential Mattis/[Bezos] meeting this Thursday. Will asked if [Mr. Bezos] is going to present a briefing to the Secretary. I'll give Will a call to explain the situation, but if possible, can you help out? Sorry to bother you with this.

Mr. DeMartino responded by e-mail to the Amazon employee, “Having supported AWS as a consultant, I have a 1-year ‘no help out’ clause.” Mr. DeMartino advised the Amazon employee to work with another OSD front office employee on the request to arrange the meeting.

c. Mr. DeMartino’s Role in the JEDI Cloud Procurement

Mr. DeMartino began serving as Deputy Secretary Shanahan’s Chief of Staff on July 19, 2017. We asked former Deputy Secretary Shanahan, four CESG members, the PCO, and six DDS, CCPO, and WHS officials whether Mr. DeMartino participated in JEDI-related activities, and to characterize his participation in those activities.

Deputy Secretary Shanahan stated that Mr. DeMartino helped him learn about the DDS and “get to know” its director. He also said that Mr. DeMartino did not play an active role in JEDI Cloud

procurement activities. He said that when attending meetings, Mr. DeMartino's role was "passive." Deputy Secretary Shanahan said an active role would involve "weighing in and taking action," and that he did not recall that Mr. DeMartino did those things.

Under Secretary Lord, who chaired the CESG during the fall of 2017, told us that Mr. DeMartino helped prepare Deputy Secretary Shanahan's September 13, 2017, memorandum, "Accelerating Enterprise Cloud Adoption," and updates that Deputy Secretary Shanahan issued to it on January 4 and June 22, 2018. She also said that Mr. DeMartino helped set up some of the first CESG meetings. She said she did not recall ever hearing Mr. DeMartino say anything about Amazon or other potential cloud contractors, and that she did not observe him saying or doing anything that caused her to question his ethics or impartiality.

Mr. Daigle, a CESG member, said that Mr. DeMartino attended Mr. Shanahan's cloud-related meetings to listen and take notes, then relayed Deputy Secretary Shanahan's questions to the CESG for answers. Mr. Daigle said that Mr. DeMartino was involved in "making sure that [the March 7, 2018] Industry Day event was going to go well." He said that Mr. DeMartino monitored "logistics" such as location, time, whether the press would attend, and reviewing the list of speakers, all to make sure everything ran smoothly, per Deputy Secretary Shanahan's direction. Two other witnesses shared with us similar assessments of Mr. DeMartino's involvement in Industry Day logistics.

Mr. DeMartino told us that Deputy Secretary Shanahan "was concerned" about the administration and logistics of the Industry Day event, and asked him to help make sure "it would run smoothly." He said that he attended a logistical planning meeting, and that he went to the event as an observer, to ensure proper logistical execution. Mr. DeMartino stated that he had no influence on which contractors would attend the event, which was open to the public.

John Bergin, Deputy Assistant Secretary of the Army for Financial Information, was on the CESG when he worked for the DoD CIO as the DoD's Business Technology Officer. Mr. Bergin said that as the Chief of Staff for the Deputy Secretary, Mr. DeMartino wanted to make sure the CESG and DDS were acting on the Deputy Secretary's direction to accelerate the adoption of cloud technology. He added that those conversations, however, had nothing to do with Amazon or specific potential cloud providers, and that Mr. DeMartino exhibited no favoritism toward Amazon.

Mr. Deasy, who took over as DoD CIO at the beginning of May 2018, described Mr. DeMartino's role in the JEDI Cloud procurement as "nominal at best." He said that Mr. DeMartino "would occasionally check in with me on the status of various things that my office was working on," but Mr. Deasy also said he did not recall that Mr. DeMartino ever talked to him about the JEDI Cloud procurement. He told us that Mr. DeMartino did not attend CESG meetings when he [Mr. Deasy] was the CIO, made no recommendations, issued no directions, said nothing about Amazon or its competitors, and exerted no influence on the JEDI Cloud procurement.

In addition, five DDS, CCPO, and WHS officials told us that Mr. DeMartino attended CESG meetings and took notes, but he did not make decisions or recommendations, and did not provide other inputs. The witnesses also said that Mr. DeMartino attended non-CESG meetings that Deputy Secretary Shanahan held on the DoD enterprise cloud initiative, and that his input was neither technical nor programmatic. He took notes, asked attendees to coordinate their actions with appropriate organizations, and advised them on how to accomplish this coordination. Two of these witnesses added

that Mr. DeMartino helped them set up, but did not attend, meetings with the intelligence community so that DDS could learn about the intelligence community's experiences with procuring cloud computing services for sensitive data.

None of these witnesses said that they heard Mr. DeMartino say anything that showed a preference toward Amazon or caused them to question his impartiality.

Mr. Daigle stated that Mr. DeMartino played no part in the JEDI Cloud procurement requirements development or acquisition planning, did nothing to attempt to influence the procurement, and the allegation that Mr. DeMartino improperly participated in the JEDI Cloud procurement was not true.

Deputy Secretary Shanahan said that Mr. DeMartino did nothing "acquisition-wise" and did not play a role in the JEDI Cloud procurement.

d. Mr. DeMartino's Post-Government Employment

On May 31, 2018, Mr. DeMartino submitted his OGE-278e for report year 2018. Mr. DeMartino disclosed that he received a "salary" of \$10,086 and a "2016 bonus of \$10,000 from SBD Advisors. He did not indicate when he received the salary. Mr. DeMartino also disclosed that he continued to participate in the SBD Advisors' Retirement Plan, and that neither he nor SBD Advisors continued to make contributions to the plan.

On July 2, 2018, Mr. DeMartino submitted his termination OGE-278e to SOCO ethics officials. On this report, he listed the same information as reported on his May 31, 2018, submission.

We asked Mr. DeMartino's attorney to explain the \$10,086 salary that Mr. DeMartino listed on his May 31, 2018, and July 2, 2018, disclosure forms. The attorney responded that when Mr. DeMartino filed his new entrant disclosure form on April 18, 2017, he disclosed \$138,661 in salary that SBD Advisors paid him from January 1, 2016 to January 27, 2017. When he filed his May 31, 2018, disclosure, Mr. DeMartino reported the \$10,086 salary that SBD paid him from January 1 to January 27, 2017, when Mr. DeMartino left SBD for DoD employment. The attorney stated that the \$10,086 payment from January 2017 was actually part of the \$138,661 that Mr. DeMartino reported on his new entrant disclosure.

We also asked Mr. DeMartino's attorney to explain the \$10,000 "2016 bonus" that Mr. DeMartino listed on his May 31, 2018, and July 2, 2018, disclosure forms. The attorney told us that the \$10,000 bonus was part of the \$30,000 bonus that Mr. DeMartino disclosed on his April 18, 2017, new entrant filing. He further stated:

Prior to joining the Department of Defense on January 27, 2017, Mr. DeMartino also received a \$10,000 bonus payment from SBD Advisors in January 2017 for his work in calendar year 2016, as reflected in his 2018 annual filing ... the \$30,000 in 'income from personal services' reported in Mr. DeMartino's new entrant filing includes a \$20,000 bonus he received in calendar year 2016 for his work at SBD Advisors in calendar year 2015, plus the \$10,000 bonus he received in January 2017 for his work at SBD Advisors during calendar year 2016.

Mr. DeMartino resigned from Government service on July 6, 2018, and co-founded Pallas Advisors with Ms. Donnelly on August 1, 2018. Mr. DeMartino described Pallas Advisors to us as a “small consulting firm in national security.” The company’s website states that Pallas is a “strategic advisory firm specializing in navigating complex national and international security dynamics” that serves as “honest brokers for companies looking to understand and thrive in a competitive environment.”

Mr. DeMartino, Ms. Donnelly, and Mr. Daigle told us Pallas Advisors did not have business relationships with any cloud provider to the Government, including Amazon.¹⁵⁶ We found no Government contracts for Pallas or Pallas Advisors in the Federal Procurement Data System.

e. OIG Conclusion – Mr. DeMartino

We did not substantiate any of the allegations related to Mr. DeMartino. We determined that Mr. DeMartino did not violate his ethics agreements and his ethical obligations regarding Amazon, Pallas Advisors, and his submission of the required OGE financial disclosures. We determined that Mr. DeMartino disclosed that he had a business relationship with AWS prior to joining the DoD on January 26, 2018. He reported to SOCO officials that AWS paid him an amount greater than \$5,000 for consulting services. He also reported that SBD Advisors had paid him a salary and bonus, and that he continued to participate in that company’s retirement benefit plan. Mr. DeMartino’s continued participation in the SBD Advisors retirement benefit plan meant he retained a financial interest in SBD Advisors that prohibited him from participating personally and substantially in any particular matter that, to his knowledge, would have a direct and predictable effect on that interest.

The SOCO attorney advised Mr. DeMartino that his prior consulting work with SBD Advisors may prohibit him from participating in matters related to Amazon. Mr. DeMartino signed a pledge, pursuant to Presidential Executive Order 13770, not to participate in any particular matter involving specific parties, including regulations and contracts, which was directly and substantially related to AWS, his former client. We found no evidence that Mr. DeMartino violated this pledge in the course of his Chief of Staff duties.

Specifically, we determined that as Deputy Chief of Staff to Secretary Mattis and Chief of Staff to Deputy Secretary Shanahan, Mr. DeMartino performed administrative duties related to early steps in the planning of the JEDI Cloud procurement. However, according to the ethics rules, these activities did not qualify as participating personally and substantially in a particular matter that involved specific parties to a Federal procurement. For example, Mr. DeMartino took notes at meetings and worked on policy memorandums and other administrative documents that were not specific to particular contractors. He also monitored planning and execution of the open-to-the-public Industry Day event at which no proprietary contractor or procurement information was distributed. We found no evidence that in performing his administrative duties for the Secretary and Deputy Secretary, Mr. DeMartino engaged in activities that FAR 3.104-1 defines as “Participating personally and substantially in a Federal agency procurement.” He had no active and significant involvement in (1) drafting, reviewing, or approving the specification or statement of work for the procurement, (2) preparing or developing the solicitation, (3) evaluating bids or proposals, or selecting a source, (4) negotiating price or terms and conditions of the contract, or (5) reviewing and approving the award of the contract.

¹⁵⁶ Mr. Daigle’s association with Pallas Advisors is presented in detail in the next subsection of this report.

Mr. DeMartino had a limited role related to JEDI that involved drafting cloud-related correspondence for the Deputy Secretary of Defense, reviewing preparations for the public Industry Day event, and taking notes at meetings. He did not (1) draft, review, or approve a specification or statement of work, (2) prepare or develop the solicitation, (3) evaluate bids or proposals, (4) select a source, (5) negotiate price or terms and conditions of the contract, (6) or review or approve the award of the contract. Similarly, by helping to prepare Deputy Secretary Shanahan's September 13, 2017, memorandum, "Accelerating Enterprise Cloud Adoption," Mr. DeMartino did not participate in a particular matter involving specific parties. The memorandum established the CESG and instructed the group to take actions directed toward awarding a cloud contract in the future. Preparing the memorandum did not involve deliberation, decision, or action focused on the interests of Amazon or SBD Advisors, as the DoD had not yet formed requirements or solicited proposals from interested potential bidders. We made the same determination regarding updates to the memorandum that Mr. DeMartino helped prepare and Deputy Secretary Shanahan signed on January 8 and June 22, 2018. Those updates related only to establishing a cloud computing program office and governance structures for the cloud adoption effort, with no reference to any cloud requirements or potential contractors.

Mr. DeMartino monitored logistical and administrative details related to the Industry Day event, but he had no input on which contractors would be invited to attend the Industry Day, as attendance was open to the public.

Regarding attendance at CESG and other JEDI Cloud-related meetings, Mr. DeMartino's role was limited to taking notes, and he did not discuss specific contractors or their particular cloud capabilities. We found no evidence that Mr. DeMartino influenced or attempted to influence the direction of the JEDI Cloud procurement, or that he said or did anything to provide AWS or its affiliates a competitive advantage over its potential competition for a future contract.

After Mr. DeMartino left the DoD, he partnered with Ms. Donnelly to establish Pallas Advisors, and hired Mr. Daigle to join Pallas Advisors. This did not violate any ethics rules. We found no evidence from witnesses, Internet searches, or in Federal procurement records that Pallas Advisors has any involvement with any cloud service providers or any contracts with the DoD.

In sum, we did not substantiate the allegations regarding Mr. DeMartino.

6. Mr. Robert Daigle

We also received complaints alleging that it was "improper" for Mr. Daigle, who was "instrumental" in the JEDI Cloud procurement, to accept a position working for Ms. Donnelly and Mr. DeMartino at Pallas Advisors after leaving the DoD.

a. Background

Mr. Daigle, formerly a U.S. House of Representatives Professional Staff Member, was nominated in early 2017 to become the DoD's Director of Cost Assessment and Program Evaluation (CAPE Director).

According to DoD Directive 5105.84, "Director Cost Assessment and Program Evaluation," the CAPE Director is the principal advisor to the Secretary of Defense and other senior officials in the DoD for independent cost assessment, program evaluation, and analysis. The CAPE Director's primary

responsibilities include providing acquisition support, resource planning, analysis, and advice. The CAPE Director's acquisition support responsibilities include, but are not limited to, developing cost estimates and analyzing alternative solutions to acquisition problems. On August 1, 2017, the U.S. Senate confirmed Mr. Daigle as the CAPE Director. He served in this position from August 3, 2017, through May 17, 2019.

Table 9 lists a chronology of significant events related to Mr. Daigle and the JEDI Cloud procurement.

Table 9. Chronology of Significant Events Related to Mr. Daigle.

Date	Event
Aug. 3, 2017	Mr. Daigle assumes duties as the CAPE Director.
Sep. 13, 2017	Deputy Secretary of Defense Shanahan establishes the CESG.
Sep. 13, 2017 – Apr. 2019	Mr. Daigle is appointed as a member of the CESG and begins attending CESG meetings; becomes involved in the business case analysis, programming and budgeting phases of the JEDI Cloud procurement; and helps establish the program office.
Apr. 5, 2019	Mr. Daigle recuses himself from participating in matters related to Pallas Advisors.
May 17, 2019	Mr. Daigle resigns from the DoD.
May 20, 2019	Mr. Daigle joins Ms. Donnelly and Mr. DeMartino at Pallas Advisors as a part-time employee.

b. Mr. Daigle's Role in the JEDI Cloud Procurement

Mr. Daigle was involved in the JEDI Cloud Procurement, but we found no evidence that his hiring by Pallas, or his work for Pallas, was related to the JEDI procurement.

Various witnesses, including CESG members, the Cloud Computing Program Manager (CCPM), the Procuring Contracting Officer (PCO), and DDS employees who worked on JEDI, described Mr. Daigle's role in the JEDI process. They said he made recommendations and guidance on issues such as programming and budgeting, the business case analysis, and the acquisition strategy, and that these actions were consistent with Mr. Daigle's responsibilities as CAPE Director.

Mr. Daigle's contributions were important to establishing governance for the DoD enterprise-level cloud initiative, resourcing the management and future execution of the cloud initiative, and overseeing some of the JEDI Cloud pre-solicitation activities. For example, witnesses said that Mr. Daigle helped establish the Cloud Computing Program Office (CCPO). Witnesses also told us Mr. Daigle worked on the problem statement and business case analysis (BCA), and was involved in developing the acquisition strategy and in deliberations over the decision to use full and open competition and a single award approach.

Mr. Daigle acknowledged his substantial role in the JEDI process. He told us that he was a core member of the CESG and also was involved in deliberations that informed the acquisition strategy, including the decision to award a single contract following a full and open competition. He identified resources to establish and operate the CCPO, and programmed funds for future efforts to migrate DoD data to the cloud. He provided the CCPO broad guidance related to business and technical requirements

for cloud computing, to ensure that solicitation requirements promoted competition. He also reviewed plans for the JEDI Cloud Industry Day. Mr. Daigle said that he and his staff had a “heavy hand” in the JEDI Cloud BCA, which analyzed the alternative approaches to solving the problem described in the BCA’s problem statement, which we presented earlier in this report.

c. Mr. Daigle Resigns and Works for Pallas Advisors

As discussed earlier in this report, Ms. Donnelly and Mr. DeMartino formed the consulting firm Pallas Advisors on August 1, 2018. Mr. DeMartino told Mr. Daigle about Pallas Advisors and suggested Mr. Daigle could work there.

Mr. Daigle told us that Mr. DeMartino approached him about potential employment with Pallas Advisors “maybe a month or so” prior to Mr. Daigle’s May 2019 resignation from DoD. Mr. Daigle said:

As the Director of CAPE we deal a lot, a lot with the Deputy Secretary’s Office. [Mr. DeMartino] as the Special Assistant to [Deputy Secretary] Shanahan - Tony and I were working together every day kind of thing when I was in the Pentagon while he was still -- before he left while he was still the Deputy Chief of Staff, and so Tony and I had become pretty good friends through that. And so when I was looking to leave the Pentagon I wasn’t exactly sure what I was going to do on a permanent basis yet, and so Tony was nice enough to say, “Hey, just come over and work with us for [sic] little while. We’ll you know we’ll cover your income while. We’ll give you a paycheck while you figure out what you want to do on a more permanent basis.”¹⁵⁷

As a result of this conversation, on April 5, 2019, Mr. Daigle recused himself from any matters related to Pallas Advisors.

Mr. Daigle left the DoD on May 17, 2019, and began his employment with Pallas Advisors on May 20, 2019, as a “principal” performing as a “part time consultant.”

Ms. Donnelly and Mr. DeMartino told us that Pallas Advisors had no business relationships with Amazon or any other cloud service provider.

We asked Mr. Daigle to comment on the allegation that there was a potential conflict of interest with him being the former CAPE Director and immediately joining Pallas Advisors to work with two former DoD officials. He responded that “Pallas [Advisors] does not have a relationship with any of the cloud providers” involved in the JEDI Cloud procurement. He said the assertion he had a conflict of interest was “made up.”

A SOCO attorney told us he provided Mr. Daigle a post-Government employment briefing as a one-on-one session focused on a specific restriction from communicating back to the DoD on behalf of Pallas Advisors or its clients. The SOCO attorney said Mr. Daigle could not lobby covered DoD officials for the duration of the current administration. He added that since Mr. Daigle never served as a source selection official, program manager, or chief of technical evaluations, he would not have had a restriction that would prevent him from working with Pallas Advisors.

¹⁵⁷ Mr. DeMartino worked for the DoD from January 20, 2017, to July 6, 2018.

d. OIG Conclusion – Mr. Daigle

We did not substantiate the allegation regarding Mr. Daigle. The complaint implied that Mr. Daigle's accepting a position at Pallas Advisors working for Ms. Donnelly and Mr. DeMartino was somehow improper because he had played a key role in the JEDI Cloud procurement while serving as CAPE Director. Mr. Daigle played an important role in the JEDI process, including executing Deputy Secretary Shanahan's direction to establish a CESG and a cloud adoption program office and helping develop the business case for the procurement.

However, Mr. Daigle was not prohibited from accepting a job with Pallas Advisors and working with other former DoD officials simply because he had played a key role in the procurement. We also found no evidence that the JEDI Cloud source selection would have had a financial effect on Mr. Daigle or on Pallas Advisors, which has no business relationships with cloud services providers or any contracts with the DoD.

In sum, we did not substantiate that Mr. Daigle violated any ethical standard by accepting a post-Government job with Pallas Advisors.

7. Ms. Stacy Cummings

On October 3, 2019, during our investigation, the DoD Office of General Counsel reported to the DoD OIG that a DoD senior official, Ms. Cummings, Principal Deputy Assistant Secretary of Defense for Acquisition (PDASD[A]) and Deputy Assistant Secretary of Defense, Acquisition Enablers (DASD[AE]), may have created a conflict of interest, or the appearance of a conflict related to the JEDI procurement. According to the notification to the DOD OIG, Ms. Cummings participated in the JEDI Cloud procurement while she owned stock in Microsoft, who at the time was one of the two remaining competitors for the JEDI contract award.

To investigate this allegation, we reviewed e-mails and documents, including Ms. Cummings' Public Financial Disclosure Report (OGE Form 278e), Periodic Transactional Report (OGE 278-T), non-disclosure agreement, disqualification statement from matters related to Microsoft, position description, and ethics training history. We also reviewed documents from the Procuring Contracting Officer's (PCO's) procurement integrity investigation, and draft and final versions of JEDI Cloud procurement options briefings that Ms. Cummings contributed to and which the DoD CIO presented to Deputy Secretary Norquist to help him decide whether the DoD should proceed with awarding a JEDI Cloud contract in October 2019.

We also interviewed Mr. Kevin M. Fahey, Assistant Secretary of Defense for Acquisition (ASD[A]), the PCO, and the Cloud Computing Program Manager (CCPM), regarding Ms. Cummings' involvement in the JEDI procurement. In addition, we interviewed witnesses who were involved in conducting Secretary Esper's review of the JEDI Cloud procurement, and witnesses who advised Ms. Cummings on ethics and potential financial conflict of interest situations where it would be necessary to disqualify or recuse oneself from participating.

We notified Ms. Cummings that she was a subject of this investigation and interviewed her. Because conflict of interest allegations potentially implicate criminal codes, such as Title 18, U.S.C., Section 208, we advised Ms. Cummings prior to her interview of the potential criminal and

administrative misconduct allegations related to this investigation. We informed Ms. Cummings that: (1) she could have a personal attorney present if desired; (2) her interview was voluntary; (3) she did not have to answer our questions; (4) no disciplinary action would be taken against her solely for refusing to answer questions; (5) any statements she made during the voluntary interview could be used as evidence in any future criminal proceeding, agency disciplinary proceeding, or both; and (6) she could stop answering questions at any time during the interview. Ms. Cummings indicated she understood she was a subject of this investigation and agreed to voluntarily answer our questions under oath. She did not bring a personal attorney with her to the interview.

A few days after her interview, Ms. Cummings notified us by e-mail that she had retained legal counsel. She declined any further interviews, and declined to fulfill a request we made during her initial interview for her to provide additional documentation related to transactions involving her Microsoft stock shares.

a. Background

Ms. Cummings first entered Federal service in 2001 as a technical director for the Department of the Navy, Naval Air Technical Data and Engineering Services Command. In January 2007, she served as the Deputy Program Executive Officer for Command, Control, Communications, Computers, Intelligence, and Space (PEO[C4I]). As the PEO(C4I), Ms. Cummings was responsible for delivering affordable, integrated, and interoperable information warfare capabilities across PEO(C4I) and other Navy programs to promote common interoperable architectures. In August 2008, she became the Director of Washington Operations for Space and Naval Warfare Systems (SPAWAR) Command, which is known today as the Naval Information Warfare Systems Command. In 2011, Ms. Cummings began work at the U.S. Department of Transportation (USDOT) as the Executive Director for the Federal Railroad Administration (FRA). In 2015, she served as the interim Executive Director for USDOT, Pipeline and Hazardous Material Safety Administration (PHMSA). As the Executive Director, she established strategic direction, provided executive leadership, and managed these operations until 2016.

In March 2016, Ms. Cummings became the Program Executive Officer for the Defense Healthcare Management Systems (PEO DHMS). As the PEO DHMS, Ms. Cummings provided oversight to the Offices of the DoD, Department of Veterans Affairs (VA) Interagency Program Office, the Healthcare Management System Modernization Program Management Office (PMO), and the Joint Operational Medicine Information Systems PMO, deploying DoD electronic health records to support the exchange of service members', veterans', and family members' medical records through electronic data-sharing.

In March 2019, Ms. Cummings assumed her duties as the DoD Principal Deputy Assistant Secretary of Defense for Acquisition (PDASD[A]) and Deputy Assistant Secretary of Defense for Acquisition Enablers (DASD[AE]).¹⁵⁸ As the PDASD(A), Ms. Cummings advises the Assistant Secretary of Defense for Acquisition on formulating, planning, and reviewing the programs, plans, strategy, priorities, and execution of the DoD acquisition system as it relates to Major Defense Acquisition Programs (MDAPs). As the DASD(AE), Ms. Cummings is also responsible for enabling innovative approaches to

¹⁵⁸ The Office of Acquisition Enablers (AE) is a new organization reporting to the Assistant Secretary of Defense for Acquisition (ASD(A)), which reports to the Under Secretary of Defense for Acquisition & Sustainment (USD[A&S]).

acquisition policy, management, analytics, business management, financial management, and advanced software acquisition, with the objective of delivering warfighting capability at the “speed of relevance.”

Table 10 lists a chronology of significant events related to Mr. Cummings and the JEDI Cloud procurement.

Table 10. Chronology of Ms. Cummings’ Significant Events Related to the JEDI Cloud Procurement.

Date	Event
2001 – 2011	Ms. Cummings works for the Department of the Navy in various senior positions.
2011	Ms. Cummings works for the U.S. Department of Transportation as the Executive Director, Federal Railroad Administration.
Mar. 2015	Ms. Cummings works as the interim Executive Director for the Pipeline and Hazardous Material Safety Administration for the U.S. Department of Transportation.
Mar. 2016	Ms. Cummings works as the Program Executive Officer for Defense Healthcare Management Systems, overseeing three PMOs.
Mar. 2019	Ms. Cummings assumes her duties as the DoD Principle Deputy Assistant Secretary of Defense for Acquisition (PDASD[A]) and Deputy Assistant Secretary of Defense for Acquisition Enablers (DASD[AE]).
Apr. 30, 2019	Ms. Cummings submits her Incumbent Public Financial Disclosure Report (OGE 278e), which discloses that she owns Microsoft stock valued in the \$15,001 to \$50,000 range.
Apr. 2019	The Cloud Computing Program Manager (CCPM) contacts Ms. Cummings to discuss what programmatic information to provide to Ms. Lord for her to authorize the Cloud Computing Program Office (CCPO) to proceed to a JEDI contract award.
May 29, 2019	Ms. Cummings completes online ethics training for new employees.
Jun. 21, 2019	The SOCO, Deputy Designated Agency Ethics Official reviews and signs Ms. Cummings OGE 278e, concluding that she is in compliance with applicable laws and regulations.
Jul. 3, 2019	Ms. Cummings sells between \$1,001 and \$15,000 in Microsoft stock, but retains additional Microsoft stock. She also sells a similar amount of stock in five other companies.
Jul. 24, 2019	Secretary Esper announces he will review the JEDI Cloud acquisition and tasks the DoD CIO to lead the review.
Aug. 6, 2019	Ms. Cummings completes annual ethics training. She also attends SOCO’s “Leader-Led” ethics training session, which includes interactive scenarios involving conflicts of interest, financial disclosures, and other ethical issues.
Aug. 13, 2019	Ms. Cummings e-mails the Deputy CIO, Mr. Peter Ranks, and requests an update on the JEDI Cloud to provide to Ms. Lord.
Aug. 14, 2019	Ms. Cummings meets with Mr. Ranks, who provides her with an update on the status of the JEDI Cloud procurement.
Aug. 23, 2019	The DoD CIO begins a series of four “education sessions” that informs Secretary Esper on DoD’s cloud strategy, requirements, and the JEDI Cloud

	RFP. The sessions conclude on September 16, 2019. Ms. Cummings does not attend these sessions.
Sep. 11, 2019	In an e-mail, the CCPM invites Ms. Cummings and Mr. Fahey to meet and discuss the progress of the JEDI Cloud procurement. Ms. Cummings responds on September 13, 2019, that regular meetings should be established so that she (Ms. Cummings) and Mr. Fahey can keep Ms. Lord informed on the progress of the JEDI Cloud procurement.
Sep. 13, 2019	Mr. Ranks e-mails Ms. Cummings and asks to meet with her to discuss a pre-brief to Ms. Lord, in advance of briefing Secretary Esper on a range of options the OCIO prepared for moving forward on the JEDI Cloud procurement.
Sep. 18, 2019	Mr. Ranks meets with Ms. Cummings and asks for her input on the options he mentioned in his September 13, 2019, e-mail.
Sep. 19, 2019	The CCPM meets on September 19, 2019, with Mr. Fahey, Ms. Cummings, and another DoD official to determine what information Ms. Lord would require before she would authorize the CCPO to proceed to a contract award.
Sep. 23, 2019	Ms. Cummings attends a meeting with Mr. Ranks, the CCPM, and a senior contracting expert to discuss the JEDI options prepared by the CIO. Ms. Cummings recommends a new option, "Option #11 - Keep JEDI, but add a performance requirement that must be met prior to exercising contract option years."
Sep. 26, 2019	Mr. Ranks, Ms. Cummings, the CCPM, the WHS AGC 1, two contract acquisition experts, and several other DoD officials meet to review the options. The purpose of this meeting is to discuss the specifics of the options and to explore any additional alternatives they could present to the Secretary.
Sep. 26, 2019	The WHS AGC 1, based on discussions during the meeting above, contacts SOCO and requests a copy of Ms. Cummings' OGE 278e.
Sep. 27, 2019	The WHS AGC 1 reviews Ms. Cummings' OGE 278e and notices that she owns Microsoft stock valued between \$15,001 and \$50,000. The WHS AGC 1 notifies the DoD SOCO.
Sep. 27, 2019	The SOCO attorney contacts Ms. Cummings and verifies that Ms. Cummings owns Microsoft stock with a value between \$15,001 and \$50,000. The SOCO attorney advises Ms. Cummings to disqualify herself from further participation in matters related to Microsoft, and to determine the actual value of her stock.
Sep. 27, 2019	Ms. Cummings signs a disqualification letter and sends an e-mail to Mr. Fahey and the SOCO attorney to notify them that she is disqualified from participating in matters related to Microsoft.
Sep. 27, 2019	The PCO initiates an assessment to determine whether a violation or possible violation of procurement integrity by Ms. Cummings had any "impact on the pending award or selection of a contractor."
Oct. 3, 2019	The SOCO attorney notifies the DoD OIG that Ms. Cummings owns Microsoft stock with a value above the de minimus threshold of \$15,000, and may have created a conflict of interest by participating in the JEDI Cloud procurement while she owned stock in Microsoft, one of the competitors.

Oct. 7, 2019	Secretary Esper recuses himself and delegates authority to Deputy Secretary Norquist to make decisions regarding the JEDI Cloud acquisition.
Oct. 7, 2019	The CIO presents seven options for proceeding with the JEDI Cloud procurement to Deputy Secretary Norquist, who decides that the procurement will continue as planned using the current Request for Proposals.
Oct. 18, 2019	The PCO completes her assessment and concludes that Ms. Cummings' participation did not impact the JEDI Cloud procurement, but that Ms. Cummings "possibly" violated 18 U.S.C., § 208.
Mar. 2, 2020	The United States Attorney for the Eastern District of Virginia (EDVA) reviews the allegations and evidence from the DoD OIG that Ms. Cummings possibly violated 18 U.S.C. § 208. The EDVA declines prosecution. When asked about the reasons for the declination, the EDVA advises that it does not comment publicly on prosecutorial decisions.

b. Ms. Cummings' Financial Disclosures and Ethics Training

As shown in the chronology table above, in March 2019, Ms. Cummings began working as the PDASD(A)/DASD(AE). On April 30, 2019, Ms. Cummings filed her OGE Form 278e, "Incumbent Financial Disclosure Report." In Section Six, "Other Assets and Income," Ms. Cummings disclosed that she owned Microsoft stock valued between \$15,001 and \$50,000. Additionally, she disclosed that her income from that stock was between \$5,001 and \$15,000.

On May 6, 2019, Mr. Fahey reviewed Ms. Cummings' OGE Form 278e. Mr. Fahey told us that when he reviewed her OGE Form 278e, he did not identify any conflicts between her financial interests and her assigned duties as PDASD(A)/DASD(AE). According to Mr. Fahey, at the time that he reviewed Ms. Cummings' OGE 278e, his focus was on traditional defense contractors and major weapons systems contractors such as General Dynamics, Lockheed Martin, and Raytheon, rather than information technology companies such as Microsoft. At the time Mr. Fahey reviewed her form, Ms. Cummings was not involved in the JEDI procurement.

On May 29, 2019, Ms. Cummings completed online ethics training for new employees.

On June 21, 2019, the SOCO Deputy Designated Agency Ethics Official (DDAEO) reviewed and signed Ms. Cummings' OGE Form 278e, indicating that Ms. Cummings was in compliance with applicable disclosure laws and regulations.

The SOCO (DDAEO) provided us with training records showing that Ms. Cummings completed new employee ethics training on August 6, 2019. Among the topics covered in the training were "Principles of Ethical Conduct" and "Conflicts of Interest." According to the documents, Ms. Cummings attended SOCO's "Leader-Led" training session which included interactive scenarios involving conflicts of interest, financial disclosures, and other ethics issues.

In her initial interview with us, Ms. Cummings said that she was familiar with financial conflict of interest requirements and prohibitions. She said that when a Government official holds a financial interest that conflicts with the performance of the official's duties, the options are divestiture, disqualification, or getting a waiver to allow continued participation in matters that conflict with a

financial interest. She said that when she was a senior official at the Department of Transportation, she divested her interest in companies from the oil and pipeline industries that her organization regulated.

We asked Ms. Cummings about her Microsoft stock. She told us that she reported ownership of Microsoft stock on her OGE Form 278e for the past 10 years. Ms. Cummings also said that in August 2019, she sold shares of Microsoft and several other stocks to reduce her exposure to equities and increase her exposure to bonds. Ms. Cummings said she did not know the total amount of Microsoft stock she sold. However, in the interview she said she could provide documentation showing the specific amounts of stock shares she sold. She also said that she reported the sales on her OGE 278-T form.¹⁵⁹

We obtained Ms. Cummings' OGE-278-T, "Periodic Transaction Report," from the DDAEO. It showed that Ms. Cummings reported the sale of Microsoft stock shares valued between \$1,001 and \$15,000. The report reflected that Ms. Cummings sold stock shares in Microsoft and five other companies. All of the stock sales took place on July 3, 2019, and Ms. Cummings filed her report on August 2, 2019.¹⁶⁰

Ms. Cummings told us she first learned that Microsoft and Amazon were the finalists for the JEDI Cloud procurement when it was publicly announced in April 2019. She said she received the DoD Public Affairs daily announcements and one of the announcements identified the two final competitors.

c. Ms. Cummings Participates in Activities Related to the JEDI Cloud Procurement

The CCPM told us that her first JEDI-related discussions with Ms. Cummings occurred in April 2019. The CCPM said she contacted Mr. Fahey to ask about the type of programmatic information, memorandum, and briefings that the CCPO would need to provide to Ms. Lord in order for Ms. Lord to authorize the CCPO to proceed to a contract award. The CCPM said that Mr. Fahey identified Ms. Cummings, his Principal Deputy for ASD(A), as the point of contact and asked the CCPM to contact Ms. Cummings to begin the discussions. Mr. Fahey told us that Ms. Cummings' role was to ensure the Office of the ASD(A) kept Ms. Lord informed on the status of the JEDI Cloud program.

On August 13, 2019, Ms. Cummings e-mailed Mr. Ranks and requested an update on the JEDI Cloud procurement to provide to Ms. Lord. Mr. Ranks told us that his first meeting with Ms. Cummings on JEDI Cloud matters was on August 14, 2019. He said he received an e-mail from Ms. Cummings stating that Ms. Lord had asked her for an update on JEDI. According to Mr. Ranks, he called Ms. Cummings, and she requested a JEDI update, asking if he could provide her with "the status of [the] acquisition" and where they were in the timeline. Mr. Ranks said they subsequently met and he talked her through the acquisition, the timelines, and the "broad outlines" of the ongoing JEDI litigation. He said, however, that he did not discuss source selection information with Ms. Cummings. Mr. Ranks also told us that Ms. Cummings offered no guidance on the procurement during or after this update, but that she did suggest that the OCIO, prior to making public statements about JEDI, run acquisition-related terms through OUSD(A&S) so they could ensure OCIO used those terms correctly in its statements.

¹⁵⁹ After her initial interview, Ms. Cummings agreed to provide documentation regarding the stock she indicated she sold. After retaining legal counsel, Ms. Cummings elected not to provide the documentation.

¹⁶⁰ The Stop Trading on Congressional Knowledge (STOCK) Act of April 4, 2012, imposed a periodic transaction reporting requirement on public filers of the OGE Form 278e.

As discussed in a previous section of this report, on August 23, 2019, Mr. Deasy led the first of four “education sessions” that informed Secretary Esper’s review of the JEDI Cloud procurement. This first session focused on DoD’s cloud strategy, requirements, and the JEDI Cloud RFP. Mr. Chewning, Secretary Esper’s Chief of Staff, told us that Mr. Deasy structured Secretary Esper’s review to support a post-review decision, not on “who would get the contract,” but on “the path forward on the JEDI [Cloud] procurement.” Ms. Cummings did not attend any of these education sessions.

Mr. Ranks told us that as Secretary Esper’s review progressed, the OCIO worked separately to develop a set of options to present to Secretary Esper for the procurement’s path forward. Ms. Cummings did not participate in the OCIO’s initial development of the options.

The OCIO created a slide presentation for a briefing to Secretary Esper, titled “Options Brief.” The slide presentation, dated September 9, 2019, described 10 potential options. One of the options was to stay with the status quo, which meant to continue evaluating proposals from competing contractors submitted in response to the RFP, and award one contract. The other options consisted of various changes to the status quo in the areas of contract ceiling amount, contract length, and pricing terms. Ms. Cummings was not involved in creating the option slides, but she did later contribute to discussions about them, as described below.¹⁶¹

On September 11, 2019, the CCPM sent an e-mail to Mr. Fahey and Ms. Cummings to ensure the CCPO was properly coordinating with OUSD(A&S) on the JEDI Cloud procurement. In her September 13, 2019, reply e-mail, Ms. Cummings wrote, “Mr. Fahey and I would like to set up a regular engagement” with the CCPO and CCPM so that Ms. Lord could remain current on the procurement’s progress. Ms. Cummings told us the reason for her request was so she could keep Ms. Lord informed and to schedule the CCPM to brief Ms. Lord on the CCPO’s readiness to award the contract.

On September 13, 2019, Mr. Ranks e-mailed Ms. Cummings to ask for her input on the range of options for proceeding with the procurement, in his efforts to prepare for a pre-brief for Ms. Lord that would take place before a briefing for Secretary Esper. Mr. Ranks told Ms. Cummings that she would receive an invitation to a meeting for this purpose. Mr. Ranks wrote:

Stacy – we’ve been holding regular meetings with the [Secretary of Defense] as part of his review of the JEDI cloud program. We are nearing a point where we will present him with a range of options for the strategy moving forward. I’d like to run through this list with you to get your insight and prepare for an eventual pre-brief with Ms. Lord before we bring the full list to the Secretary. You’ll see an invite from my office titles something like ‘acquisition strategy discussion.’ This will be the topic. Feel free to call if you have any questions ahead of the office call.

On September 18, 2019, Mr. Ranks met with Ms. Cummings, and they reviewed the “Options Brief.” Ms. Cummings told us that Mr. Ranks told her “that he could use some help vetting different COAs,” and that she was there to help Mr. Ranks and the CIO get through the process that would lead to a decision on how to proceed with the procurement. Ms. Cummings also told us that she reviewed the options the OCIO had developed and advised Mr. Ranks that he should consider reducing the number of

¹⁶¹ This briefing was never given to Secretary Esper. However, the options were presented to Deputy Secretary Norquist after Secretary Esper’s recusal, as explained in Section III of this report.

options, and to involve contracting experts in future meetings. Mr. Ranks told us that Ms. Cummings' "biggest suggestion" was that OCIO needed to include a contracting expert in future meetings.

According to Ms. Cummings, she told Mr. Ranks that the OCIO needed to improve its public communications. Ms. Cummings said she spoke with Mr. Ranks regarding a public comment that Mr. Deasy made where he referred to the "final RFP." She said she explained to Mr. Ranks:

Hey, I saw in the news that Dana Deasy said something. It appeared to be incorrect If you want to run things through our office [A&S] to make sure it's correct, I can help you do that . . . the term final RFP to be released . . . we knew that was incorrect . . . I believe that what [Mr. Deasy] meant, based on the rest of his words, was that the final opportunity for bidders to give their best and final response but when he [Mr. Deasy] said final RFP, that was just an inappropriate use of the terminology and we wanted to make sure that Mr. Deasy didn't accidentally say something in public domain that was incorrect.

The CCPM told us that Ms. Lord had to sign the Acquisition Decision Memorandum (ADM) that would authorize the CCPO to proceed to a contract award.¹⁶² The CCPM met on September 19, 2019, with Mr. Fahey, Ms. Cummings, and another DoD official to determine what information Ms. Lord would require before she would sign the ADM. The CCPM said that Mr. Fahey recommended that the CCPM brief Ms. Lord directly and that Ms. Cummings did not contribute to the discussion.

The CCPM told us that on September 23, 2019, she met with Ms. Cummings, Mr. Ranks, and a senior contracting expert to discuss the options. According to the CCPM, Deputy Secretary Norquist wanted the OCIO to develop "as many options as possible and did not want us [OCIO] pre-filtering anything and to come at it creatively." The CCPM also said that Ms. Cummings suggested that the OCIO consider an additional option, "Option 11," which entailed changing the contract to add a performance requirement that the contractor would have to meet before the Government exercised option years.

Later that day, the CCPM e-mailed the meeting attendees, the WHS AGC 1, an acquisition attorney, and another senior contracting expert from A&S. The CCPM wrote:

There is one additional option that was suggested today by Stacy Cummings. It's not in the attached [Options Brief] deck, so I'm adding it here . . . #11 - Keep JEDI, but add a performance requirement that must be met prior to exercising the ID/IQ options We are targeting to have a meeting with everyone on this email, Stacy Cummings, and Pete Ranks by Thursday [September 26, 2019] if possible. I believe [the senior contracting expert] is reaching out to everyone to pull together some potential windows.

Ms. Cummings told us that she suggested adding a performance requirement "as a communications strategy," so that the DoD could publicly say that "we only will award options if the performance is at a high level," and to convey a message that option years were not guaranteed.

¹⁶²As discussed in Section III of this report, Ms. Lord retained the authority to authorize the CCPM to proceed to award.

On September 26, 2019, Mr. Ranks, Ms. Cummings, the CCPM, the WHS AGC 1, two senior contracting experts, and several other DoD officials met and reviewed the options. According to the CCPM, the purpose of this meeting was to discuss and weigh the options, potential impacts on the proposals then under review, and to explore any additional alternatives. The CCPM also said this was the first meeting where representatives from acquisition, legal, and the program office had productive conversations about the options they could present to the Secretary.

The CCPM said that one of the contracting experts wanted to ensure all of the attendees at the September 26, 2019, meeting had been properly “vetted” for financial disclosures and potential conflicts of interest.

The WHS AGC 1 told us that when the question surfaced regarding the attendees being screened for financial conflicts of interest, the CCPM commented that Ms. Cummings had “been vetted before.” The WHS AGC 1 told us that after the meeting concluded, she asked the CCPM, “did you vet [Ms. Cummings]?” The WHS AGC 1 said the CCPM responded, “No, I assumed [you] had [vetted Ms. Cummings].” The WHS AGC 1 told us she then requested Ms. Cummings’ financial information from SOCO.

d. Ms. Cummings Disqualifies Herself from Participating in Matters Related to Microsoft

The WHS AGC 1 told us that she reviewed Ms. Cummings’ OGE 278e on September 27, 2019, and saw that Ms. Cummings still owned Microsoft stock shares valued between \$15,000 and \$50,000. The WHS AGC 1 said that she called the SOCO DDAEO and asked for any additional financial information from Ms. Cummings’ file. According to the WHS AGC 1, the DDAEO said that Ms. Cummings had sold Microsoft stock in July 2019, but that Ms. Cummings “still owned a substantial amount” of Microsoft stock. The SOCO attorney told us she then contacted Ms. Cummings, who said she did not know the exact value of her Microsoft stock she owned.

Ms. Cummings told us that the SOCO attorney asked her to determine the value of the stock she owned, and instructed her that she had to disqualify herself from any participation in particular matters related to Microsoft. Ms. Cummings then sent a letter, dated September 27, 2019, reporting her disqualification to Mr. Fahey and the SOCO DDAEO attorney. The letter stated, in part:

This is to notify you that I have financial interests in or covered relationships with the following entities that are either current DoD contractors, or companies that are seeking or may seek in the future to do business with DoD:

Microsoft Corp. Stock

As such, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of Microsoft for the duration of my tenure as the Principal Deputy Assistant Secretary of Defense, Acquisition Enablers, unless I first obtain a written waiver, pursuant to 18 U.S.C., § 208.

Ms. Cummings told us that she did not disqualify herself before September 27, 2019, even though she owned Microsoft stock, because “I didn’t believe that I would have any impact on the source selection. I was not a decision maker, or in the chain of command of the decision maker.”

Ms. Cummings said that after she recused herself, she did not receive any direction on further participation on the JEDI procurement because “I recused myself...[and] let it be known that I wouldn’t be participating any further.”

Witnesses we interviewed told us that Ms. Cummings did not participate in anything related to the JEDI Cloud procurement after September 26, 2019. We found no evidence that Ms. Cummings participated in JEDI Cloud procurement activities after her disqualification related to Microsoft stock on September 27, 2019.

Mr. Ranks told us that the WHS AGC 1 called and informed him that Ms. Cummings had “Microsoft stock above the de minimus threshold,” that Ms. Cummings would no longer be a part the JEDI discussion any further, and that the matter was likely to be referred to the DoD Inspector General.¹⁶³

~~(FOUO SSI)~~ Also on September 27, 2019, the PCO initiated an assessment of the impact that Ms. Cummings’ actions had on the integrity of the procurement. To conduct the assessment, the PCO interviewed the CCPM, WHS AGC 1, and a contracting specialist, and consulted with a SOCO attorney. The PCO also reviewed e-mails, the options briefing, and the decision brief that Mr. Deasy presented to Deputy Secretary Norquist on October 7, 2019. The PCO did not interview ██████████

The SOCO attorney told us that Ms. Cummings’ limited role in the procurement may have constituted personal and substantial participation in the JEDI Cloud procurement because she may have made recommendations or rendered advice in a particular matter.

On October 3, 2019, the SOCO attorney sent a letter to the DoD OIG General Counsel and the DoD Hotline Director to inform them that Ms. Cummings “may have violated 18 U.S.C. § 208 by participating personally and substantially in a particular matter having a direct and predictable effect on her actual or imputed financial interests.” The SOCO DDAEO attorney stated in the letter that Ms. Cummings had participated in “meetings and discussions concerning potential strategies and options relative to how the Department will move forward with the Joint Enterprise Defense Infrastructure (JEDI) Cloud acquisition.” The attorney identified in the letter that Microsoft was a “current offeror,” and that Ms. Cummings owned Microsoft stock shares valued above the \$15,000 threshold.¹⁶⁴ The attorney stated that Ms. Cummings signed a disqualification letter and offered to divest her Microsoft holdings.

¹⁶³ The de minimus threshold refers to a provision in Title 5, Code of Federal Regulations, § 2640.202, which states that an employee may participate in any particular matter involving specific parties in which the disqualifying financial interest arises from the ownership by the employee, his spouse, or minor children, of securities issued by one or more entities affected by the matter if (1) the securities are publicly traded or are long-term Federal Government, or are municipal securities; and (2) the aggregate market value of the holdings of the employee, his spouse, and his minor children in the securities of all entities does not exceed \$15,000.00.

¹⁶⁴ Ibid.

On October 7, 2019, Mr. Deasy presented to Deputy Secretary Norquist the options for how to proceed with the JEDI procurement following Secretary Esper's review.¹⁶⁵ As Ms. Cummings had suggested during her draft input, the number of options presented to Deputy Secretary Norquist had been reduced from the 10 options the OCIO originally developed, to seven.

We reviewed two slide presentations; one with the 10 options that Mr. Ranks asked Ms. Cummings to review, and one with the seven options that Mr. Deasy presented to Deputy Secretary Norquist. Neither presentation contained any language or graphics presenting Ms. Cummings' suggestion to introduce a performance requirement that the successful offeror would have to meet before the Government would exercise a contract option. The variables that differentiated the seven options included the number of contracts, ceiling price, contract length, and pricing. The presentation to Deputy Secretary Norquist did not include a recommendation for his action, but did include additional slides for more detailed discussion of three options. One was to stay with the status quo. The second would award a single JEDI contract but then issue a new solicitation for another award, using the same requirements. The third would award a single JEDI contract and then issue a new solicitation for another contract to provide cloud services for unclassified data only. As discussed in Section III of this report, Deputy Secretary Norquist selected the status quo option.

On October 18, 2019, the PCO completed her assessment of Ms. Cummings' actions. The PCO concluded that Ms. Cummings' attendance at the options meetings:

may have constituted personal and substantial participation in the JEDI Cloud procurement, in accordance with 5 CFR § 2635.402(b)(4) and in violation of 18 U.S.C. § 208. Ms. Cummings did not have an 18 U.S.C. 208 waiver. This (FOUO) matter has been referred to ethics counsel for further review and action, to include any required referrals to the DoD OIG.

The PCO wrote:

Regardless of the potential violations of law and regulation, Ms. Cummings' actions did not impact the pending award or selection of a contractor under the JEDI Cloud procurement because she had no information about the specifics of the JEDI Cloud source selection activities, did not participate in the selection of the JEDI Cloud contractor, and did not provide direct input in to the actual options presented to Deputy Secretary Norquist.

...

I find evidence that Ms. Cummings was not "participating personally and substantially in a Federal agency procurement" as defined in FAR 3.104-1, and therefore she did not violate FAR 3.101-1.

The PCO also wrote that Ms. Cummings failed in a key ethical obligation for DoD employees:

¹⁶⁵ As discussed in Section III of this report, Secretary Esper had recused himself from making decisions related to the JEDI Cloud acquisition.

Nonetheless, I find she did not conduct herself in a manner above reproach. She did not strictly avoid any conflict of interest or even the appearance of a conflict of interest in light of her financial interests in Microsoft.

The PCO concluded:

There is no impact on the pending award or selection of a contractor in accordance with FAR 3.104-7. This determination is based upon the fact that, after a thorough investigation, I found no evidence that Ms. Cummings: (1) provided any input impacting the JEDI Cloud acquisition decisions or documents; (2) obtained or disclosed contractor bid or proposal information; or (3) provided direct input into the options presented to the Deputy Secretary. Further, she recused herself from further participation in the creation of options prior to their finalization and presentation to Department leadership.

The Deputy Director, WHS Acquisition Directorate, concurred with the PCO's determination.

Criminal Declination

As noted above, the DoD investigated this matter after receiving the referral. The DoD OIG referred evidence of Ms. Cummings' conduct to the Assistant U.S. Attorney for the Eastern District of Virginia (EDVA), for review as a possible criminal violation of Title 18, U.S.C., § 208. On March 2, 2020, the EDVA declined prosecution. When asked about the reasons for the declination, the EDVA advised that it does not comment publicly on prosecutorial decisions.

e. OIG Conclusions Regarding Ms. Cummings

Based on the facts in our investigation, which we described above, we concluded that Ms. Cummings's actions violated ethical standards when she participated personally and substantially in a particular matter related to the JEDI procurement while owning shares of Microsoft stock. We also concluded that Ms. Cummings participation in the JEDI procurement process created the appearance of a violation of law or ethical standards. Despite these ethics violations, however, we agree with the PCO's conclusion that Ms. Cummings' actions did not impact the JEDI Cloud contract source selection.

Ms. Cummings knew in August and September 2019 that she had a financial interest in Microsoft, and she knew that at the time, Microsoft was one of two competitors in a source selection that was nearing its conclusion. She was a long-time Government senior official and OGE Form 278e filer who had recently completed ethics training in conflicts of interest that directly related to these circumstances. Yet, when asked to participate in a particular matter related to the JEDI Cloud procurement, in a manner that would have a direct and predictable effect on her personal financial interest in Microsoft, she did not take any of the three required actions: (1) disqualify herself; (2) divest her conflicting financial interest; or (3) seek a waiver to participate in the matter. She also did not notify her supervisor about her Microsoft holdings when she was asked to participate in the particular matter, and she did not request ethics advice regarding her financial stake in Microsoft. Instead, she participated in the meetings, briefings, and activities related to JEDI, and did not disqualify herself until the WHS AGC 1 belatedly discovered her financial interest in Microsoft and raised the issue.

Improper Participation

The Joint Ethics Regulation (JER), which incorporates Title 5, Code of Federal Regulations (CFR), Part 2635, “Standards of Ethical Conduct for Employees of the Executive Branch,” covers conflicting financial interests. Section 2635.402 of the CFR, “Disqualifying Financial Interests,” prohibits an employee from participating personally and substantially in an official capacity in any particular matter in which, to her knowledge, she or any person whose interests are imputed to her has a financial interest, if the particular matter will have a direct and predictable effect on that interest. Unless there is a waiver or exception, an employee shall disqualify herself from participating in such matters by not participating in them.

Ms. Cummings’ ownership of Microsoft stock, with a value in excess of the de minimus threshold of \$15,000, constituted a personal financial interest in Microsoft. Ms. Cummings knew that she held Microsoft stock when she was asked in August 2019 to participate in JEDI Cloud procurement-related activities. She had disclosed it on her OGE Form 278e five months earlier, and she told us that she had held the Microsoft stock and reported it for 10 consecutive years. She also was aware from being notified in April 2019, that Microsoft and Amazon were the two remaining contractors in the JEDI Cloud procurement.

The options briefing that supported Deputy Secretary Norquist’s decision on how to proceed with the JEDI Cloud procurement, at the time of Ms. Cummings’ participation, was a particular matter. It involved deliberation, decision, and actions that were focused on the interests of the DoD and would have an impact on the two remaining competitors, Microsoft and Amazon. The outcome of this particular matter could lead to a new solicitation, which could increase the number of competitors; or to proposal revisions, which could change the source selection team’s evaluation of the proposals; or directly to an award for either Microsoft or Amazon.

We concluded that, under the JER, the outcome of the particular matter, a decision on how to proceed with the JEDI Cloud procurement, would have a direct and predictable effect on Ms. Cummings’ financial interest in Microsoft. We recognize that Ms. Cummings was not involved in the source selection decision to select either Microsoft or Amazon; however, she was involved in evaluating the procurement options presented to Deputy Secretary Norquist, including whether the DoD should start the procurement over, continue with the procurement as-is, or continue with the procurement but with modifications to the contract terms.

Ms. Cummings’ recommendation was to continue with the procurement while at the same time establishing a performance requirement in the contract. She also advised that the DoD needed a better communications strategy going forward. She did not recommend restarting the procurement. As a result, the outcome of the particular matter, whether the source selection could proceed and award a contract to Microsoft or Amazon, would have a positive or negative short and long term effect on Microsoft’s business, which would have a direct and predictable effect on the value of her Microsoft stock.

Therefore, when Ms. Cummings was asked in August 2019 and September 2019 to participate in a particular matter related to the JEDI Cloud procurement, her financial interest in Microsoft became a “disqualifying financial interest” because it conflicted with her official duties. Rather than participate in the particular matter related to the JEDI Cloud procurement, Ms. Cummings should have either declined

to participate, divested her financial interest in Microsoft before participating, or obtained a waiver that would allow her to participate. She did none of these things. She also did not seek the advice of an ethics counselor or consult with her supervisor before she decided to participate.

Instead, Ms. Cummings participated personally in the particular matter by meeting with Mr. Ranks to receive an update on the procurement, coordinating with OCIO and other officials to schedule JEDI update briefings for Ms. Lord, reviewing and discussing options that would inform Deputy Secretary Norquist's October 7, 2019, decision to proceed with the procurement, suggesting that the OCIO reduce the number of options under consideration, and suggesting that the OCIO consider adding a performance requirement to the solicitation or contract.

Ms. Cummings' participation was substantial as well as personal. The JER states that participating substantially:

means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

Ms. Cummings reviewed, discussed, and advised on the options for proceeding with the particular matter related to the JEDI Cloud procurement following Secretary Esper's review. Her involvement was on a critical step that was neither administrative nor peripheral. She advised the OCIO to reduce the number of options considered. She also advised the OCIO to consider modifying the solicitation or contract by adding a performance requirement that the contractor would have to satisfy before being allowed to continue to provide cloud computing services during contract option years. Though her participation did not affect the ultimate outcome of the decision on the particular matter [the OCIO did not include her recommendation and Deputy Secretary Norquist decided not to change the solicitation or contract terms], the effort was of substantial importance to the matter because it had a bearing on which options the OCIO presented to Deputy Secretary Norquist for a decision. Those options could have resulted in a modified contract length, a different ceiling price, additional contract awards, or other substantive changes. Adopting such changes could have required proposal revisions or reissuing the solicitation.

Ms. Cummings also received a JEDI Cloud procurement update briefing from Mr. Ranks so that she could in turn update Ms. Lord, and she coordinated with the OCIO to schedule CCPM briefings to Ms. Lord. These briefings were also important to the particular matter, not peripheral or administrative, because they informed Ms. Lord's October 24, 2019, decision to sign the Acquisition Decision Memorandum (ADM) that authorized the CCPO to proceed with the process of awarding the JEDI Cloud contract.

In addition, Ms. Cummings actions created the appearance of a conflict. The JER requires employees to “endeavor to avoid any actions creating the appearance that they are violating the law or ethical standard set forth in this part. Whether particular circumstances create the appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.” Similarly, FAR 3.101, “Standards of Conduct,” states that the “general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships.”

Accordingly, we concluded that Ms. Cummings improperly participated in a particular matter related to the JEDI Cloud procurement, in violation of the JER. However, in mitigation, we note that there was no evidence that Ms. Cummings attempted to conceal her financial interest in Microsoft. Ms. Cummings reported her ownership of Microsoft stock on her OGE 278e for over 10 years, and she had reported the sale of some her stock during 2019.

In addition, while employees have the duty to report their own conflicts of interest, we also found that CCPM and the WHS AGC 1 who advised the CCPM should have exercised better due diligence in ensuring that all officials who participated in framing and evaluating the options were free from any conflicts. They missed opportunities to accomplish this before Ms. Cummings became substantially involved in the matter. For example, Mr. Fahey told the CCPM in April 2019 that Ms. Cummings would be his POC for JEDI. Ms. Cummings asked Mr. Ranks for a JEDI update on August 13, 2019. On September 13, 2019, Mr. Ranks asked Ms. Cummings to review the options brief his office prepared for Secretary Esper, and Ms. Cummings’ participation in meetings related to those options continued until September 26, 2019. Ms. Cummings’ participation continued, even during that September 26, 2019 meeting, because the CCPM and the WHS AGC 1 both thought the other had screened Ms. Cummings for conflicts. These failures contributed to Ms. Cummings’ conflict of interest.

The Assistant U.S. Attorney for the Eastern District of Virginia, after considering the same facts that we considered, declined to prosecute Ms. Cummings for violating Title 18, U.S.C., § 208, “Acts Affecting a Personal Financial Interest.”

Impact on the JEDI Cloud Source Selection

FAR 3.104-7 required the PCO, upon receipt of information of a possible violation of procurement integrity, to determine if the reported violation or possible violation had any impact on the pending award or selection of a contractor. The PCO concluded that Ms. Cummings’ actions did not impact the actual award or selection of a contractor. We agree. In reaching this conclusion, we note that FAR 3.104-1 states that participating personally and substantially in a Federal agency procurement means “active and significant involvement of an official in (1) drafting, reviewing, or approving the specification or statement of work for the procurement, (2) preparing or developing the solicitation, (3) evaluating bids or proposals, or selecting a source, (4) negotiating price or terms and conditions of the contract, or (5) reviewing and approving the award of the contract.”

As explained above, we found that Ms. Cummings participated personally and substantially in a particular matter related to the JEDI Cloud procurement. However, she did not participate in the procurement itself, because she did not participate in any of the activities articulated in FAR 3.104-1. The OCIO presented options to Deputy Secretary Norquist that did not include an additional performance requirement, as Ms. Cummings suggested. Further, Deputy Secretary Norquist did not

select any option that would require proposal revisions or a new solicitation. Instead, he decided that the DoD would continue to evaluate the Microsoft and Amazon proposals, select the best proposal, and award the contract. Finally, we noted that Ms. Cummings immediately disqualified herself from further participation in matters related to the JEDI Cloud procurement when the SOCO attorney advised her to do so. As a result, we determined that while Ms. Cummings violated the JER, it had no impact on the JEDI Cloud procurement.

We recommend that the Undersecretary of Defense for Acquisition and Sustainment consider appropriate action for Ms. Cummings' ethics violations, including potential counselling and training.

We also recommend that the DoD Chief Information Officer review the Cloud Computing Program Office's procedures for identifying and mitigating potential conflicts of interest and take appropriate action as a result of this review.

Ms. Cummings' Response to our Tentative Conclusion Letter

On February 27, 2020, we provided Ms. Cummings our Tentative Conclusion Letter (TCL) which included our preliminary conclusions and gave her the opportunity to comment on the results of our investigation before finalizing our report. On March 11, 2020, Ms. Cummings, through her attorney, provided a written response to our preliminary conclusions, which we present here in its entirety. She wrote:

Thank you for the opportunity to respond to the Office of the Inspector General's (OIG) preliminary report of investigation relating to the Joint Enterprise Defense Infrastructure (JEDI) cloud procurement. I appreciate the [DoD] OIG recognition that I consistently reported my ownership of Microsoft stock on my OGE 278e, reported the sale of some of this stock in 2019, did not attempt to conceal this ownership, immediately disqualified myself upon advisement from the Standards of Conduct Office (SOCO), and, most importantly, did not participate in the procurement itself.

For these and related reasons, I disagree that my participation would have had a direct and predictable effect on my personal financial interest. I did not receive source selection sensitive material, participate in the procurement itself, or perceive my role in these meetings as affecting which company would receive the contract or whether to procure this contract in the first place. [Footnote 1] Without such knowledge or involvement, I could not have predicted what effect my limited involvement would have on my stock with Microsoft.

I understand that the OIG may continue to advance a different opinion, and I would welcome additional counselling and training. I look forward to learning from this matter and improving as a senior leader of the organization.

[Footnote 1] I want to clarify that I did not recommend to modify the solicitation of the contract by adding a performance requirement. I merely recommended to clearly communicate the existing requirements that the Department would award options based on performance measures.

Her response did not cause us to change the report. First, Ms. Cummings stated that she appreciated that we recognized that she “consistently reported” her Microsoft stock ownership on her OGE-278e disclosure forms; that she sold some of her Microsoft stock in 2019; that she did not attempt to conceal her stock ownership; and that she immediately disqualified herself and did not participate in the JEDI Cloud procurement when advised of a potential conflict of interest.

However, Ms. Cummings disputed that her participation in briefings and meetings in August and September 2019 could have had a direct and predictable effect on her personal financial interest. We disagree. In our report, we note that in August and September of 2019, Ms. Cummings knew that she had a financial interest in Microsoft, and she also knew that at that time Microsoft was one of two competitors in a source selection that was nearing its conclusion.

During the meetings and briefings Ms. Cummings participated in, she made recommendations on how or whether to proceed with the JEDI Cloud procurement in light of the protests and litigation efforts brought by already-eliminated Cloud competitors, such as Oracle. Decisions related to her recommendations would have a direct and predictable effect on her financial interest in Microsoft, one of the remaining competitors for a contract award. The outcome of the particular matter she participated in, the source selection proceeding with a contract award to Microsoft or Amazon, would have had an effect on Microsoft’s cloud computing business, and a direct and predictable effect on the value of her Microsoft stock.

Regarding Ms. Cummings’ request in the footnote to clarify an option she helped develop for a briefing to Deputy Secretary Norquist, we noted above, in this report, that the OCIO did not include Ms. Cummings’ recommendation (Option #11) in the options brief presented to Deputy Secretary Norquist for action.

After considering Ms. Cummings’ response, we stand by our findings, conclusions, and recommendations and did not change the report.

APPENDIX A – U.S. GOVERNMENT ACCOUNTABILITY OFFICE PROTESTS

FAR Part 33, “Protests, Disputes, and Appeals,” Subpart 33.1, “Protests,” prescribes policies and procedures for filing protests. A “protest” is a written objection by an interested party. It may be filed in response to (1) a solicitation, (2) the cancellation of a solicitation, (3) the award or proposed award of the contract, or (4) the termination or cancellation of an award. An interested party may file a protest with the contracting agency, the Government Accountability Office (GAO), or the COFC. Unless the protest is dismissed because it is procedurally or substantively defective, the GAO will either deny or sustain the protest. When a protest is sustained, GAO normally recommends appropriate corrective action.

The DoD published the JEDI Cloud Request for Proposals (RFP) on July 26, 2019. Oracle of America, Inc. (Oracle) filed a protest of the solicitation with the GAO on August 6, 2018. Oracle later supplemented and revised its protest. The protest asserted that the (1) a single-award indefinite delivery/indefinite quantity contract for the JEDI Cloud procurement was contrary to statute and regulation, (2) terms of the solicitation exceeded the DoD’s needs, and (3) DoD failed to properly consider potential conflicts of interest.

The GAO denied Oracle’s protest. In its November 14, 2018 decision, the GAO stated that:

- DoD’s single-award approach to obtain cloud services was consistent with statute and regulation;
- the DoD provided reasonable support for all of the solicitation provisions that Oracle asserted exceeded the DoD’s needs; and
- Oracle’s allegations of conflicts of interest did not provide a basis for sustaining the protest.

The full, 19-page decision more fully describes Oracle’s assertions, the DoD’s responses, and the GAO’s analysis. Please visit the GAO website for view the decision. After the GAO decision, Oracle filed a protest in the COFC. We provide information about that protest, which Oracle filed on December 6, 2018, at Appendix B of this report.

On December 11, 2018, the GAO dismissed a protest that International Business Machines Corporation (IBM) filed on October 10, 2018. In its decision, the GAO wrote that IBM made the “same or similar assertions” that Oracle made in its protest, and that those matters were pending before the COFC. Please visit the GAO website to view the decision.

APPENDIX B – U.S. COURT OF FEDERAL CLAIMS PROTEST

FAR Part 33, “Protests, Disputes, and Appeals,” Subpart 33.1, “Protests,” prescribes policies and procedures for filing protests. A “protest” is a written objection by an interested party. It may be filed (1) in response to a solicitation, (2) the cancellation of a solicitation, (3) the award or proposed award of the contract, or (4) the termination or cancellation of an award. An interested party may file a protest with the contracting agency, the GAO, or the COFC.

The DoD published the JEDI Cloud RFP on July 26, 2019. Oracle of America, Inc. (Oracle) filed a protest of the solicitation with the GAO on August 6, 2018, which the GAO denied on November 14, 2018. On December 6, 2018, Oracle filed a protest with the COFC. Oracle asserted that (1) the DoD’s single award decision violated the law, (2) certain gate criteria in the RFP were inappropriate, and (3) the procurement was tainted by individual and organizational conflicts of interest. The court heard oral arguments on July 10, 2019, and reviewed whether the DoD’s decisions were “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” The court wrote that the court’s “task is to determine whether the procurement official’s decision lacked a rational basis or the procurement procedure involved a violation of a regulation or procedure.” If the court concluded that DoD’s conduct failed under that standard of review, the court would then determine if that conduct was prejudicial to Oracle’s chances to win the contract. To show that it was prejudiced by an error, Oracle had to demonstrate “that there was a ‘substantial chance’ it would have received the contract award but for the [agency’s] errors.”

On July 12, 2019, the court issued an order that denied Oracle’s and granted the DoD’s motion for judgment. The court entered a judgment in favor of the DoD on July 19, 2019.¹⁶⁶ A July 26, 2019, opinion supporting the judgment stated the following.

- The gate criterion that Oracle failed to satisfy was enforceable.
- The contracting officer reasonably justified her determination to use a single award approach, but the Under Secretary of Defense for Acquisition and Logistics’ determination to approve the use of a single award approach was not consistent with an “ordinary reading” of 10 U.S.C. § 2304a(d)(3)(B)(ii) (2018).
- Despite this error, the single award determination did not prejudice Oracle, because Oracle would not have had a better chance of competing for the contract due to Oracle “not meet[ing] the agency’s properly imposed security requirements” which were not related to the single award approach.
- The contracting officer’s determinations that conflicts of interest reported to her did not impact the procurement were rational and consistent with the FAR.
- The contracting officer’s work was “thorough and even-handed.”

¹⁶⁶ Oracle appealed on August 26, 2019.

- The persons whom Oracle asserted were conflicted were “bit players” whose involvement “did not taint” the work of those who controlled the direction of the procurement.¹⁶⁷

The court’s order, judgment, and opinion are accessible by visiting <https://www.uscfc.uscourts.gov/opinion-search>, and searching on keyword “18-1880.”

¹⁶⁷ The persons were Mr. Anthony DeMartino, Mr. Deap Ubhi, and Mr. Victor Gavin.

APPENDIX C – STANDARDS GOVERNING THE DOD OIG REVIEW OF THE JEDI CLOUD PROCUREMENT

Title 10, U.S.C. § 2304a, “Task and Delivery Order Contracts: General Authority,”

This section of the U.S.C. states that the head of an agency may enter into a task or delivery order contract for procurement of services or property. The head of an agency may exercise this authority to award a single task or delivery order contract or separate task or delivery order contracts for the same or similar services.

No task or delivery order contract in an amount estimated to exceed \$100,000,000 (including all options) may be awarded to a single source unless the head of the agency determines in writing that (A) the task or delivery orders expected under the contract are so integrally related that only a single source can reasonably perform the work; (B) the contract provides only for firm-fixed-price task orders or delivery orders for (i) products for which unit prices are established in the contract; or (ii) services for which prices are established in the contract for the specific tasks to be performed; (C) only one source is qualified and capable of performing the work at a reasonable price to the government; or (D) because of exceptional circumstances, it is necessary in the public interest to award the contract to a single source.

A task or delivery order may not increase the scope, period, or maximum value of the task or delivery order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

The head of an agency entering into a task or delivery order contract under this section may provide for the contract to cover any period up to five years and may extend the contract period for one or more successive periods pursuant to an option provided in the contract or a modification of the contract. The total contract period as extended may not exceed 10 years unless such head of an agency determines in writing that exceptional circumstances necessitate a longer contract period.

Federal Acquisition Regulation (FAR), Volume I, March 2005

FAR 2.101, “Definitions,” states:

“Commercial item” means

(1) any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and (i) has been sold, leased, or licensed to the general public; or (ii) has been offered for sale, lease, or license to the general public;

(2) any item that evolved from an item described above through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed above, but for (i) modifications of a type customarily available in the commercial marketplace; or (ii) minor modifications of a type not

customarily available in the commercial marketplace made to meet Federal Government requirements. Minor modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements in paragraphs (1), (2), (3), or (5) of this definition that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if (i) such services are procured for support of an item referred to in paragraph (1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and (ii) the source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions. For purposes of these services (i) "Catalog price" means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or contractor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and (ii) "Market prices" means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors;

(7) Any item, combination of items, or service referred to in paragraphs (1) through (6) of this definition, notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.

FAR 3.104-4, "Disclosure, protection, and marking of contractor bid or proposal information and source selection information.," states:

(a) Except as specifically provided for in this subsection, no person or other entity may disclose contractor bid or proposal information or source selection information to any person other than a person authorized, in accordance with applicable agency regulations or procedures, by the agency head or the contracting officer to receive such information.

(b) Contractor bid or proposal information and source selection information must be protected from unauthorized disclosure in accordance with 14.401, 15.207, applicable law, and agency regulations.

(c) Individuals unsure if particular information is source selection information, as defined in 2.101, should consult with agency officials as necessary. Individuals responsible for preparing material

that may be source selection information as described at paragraph (10) of the “source selection information” definition in 2.101 must mark the cover page and each page that the individual believes contains source selection information with the legend “Source Selection Information— See FAR 2.101 and 3.104.” Although the information in paragraphs (1) through (9) of the definition in 2.101 is considered to be source selection information whether or not marked, all reasonable efforts must be made to mark such material with the same legend.

(d) Except as provided in paragraph (d)(3) of this subsection, the contracting officer must notify the contractor in writing if the contracting officer believes that proprietary information, contractor bid or proposal information, or information marked in accordance with 52.215-1(e) has been inappropriately marked. The contractor that has affixed the marking must be given an opportunity to justify the marking.

(1) If the contractor agrees that the marking is not justified, or does not respond within the time specified in the notice, the contracting officer may remove the marking and release the information.

(2) If, after reviewing the contractor’s justification, the contracting officer determines that the marking is not justified, the contracting officer must notify the contractor in writing before releasing the information.

(3) For technical data marked as proprietary by a contractor, the contracting officer must follow the procedures in 27.404-5.

(e) This section does not restrict or prohibit—

(1) A contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(2) The disclosure or receipt of information, not otherwise protected, relating to a Federal agency procurement after it has been canceled by the Federal agency, before contract award, unless the Federal agency plans to resume the procurement;

(3) Individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur; or

(4) The Government’s use of technical data in a manner consistent with the Government’s rights in the data.

(f) This section does not authorize—

(1) The withholding of any information pursuant to a proper request from the Congress, any committee or subcommittee thereof, a Federal agency, the Comptroller General, or an Inspector General of a Federal agency, except as otherwise authorized by law or regulation. Any release containing contractor bid or proposal information or source selection information must clearly

identify the information as contractor bid or proposal information or source selection information related to the conduct of a Federal agency procurement and notify the recipient that the disclosure of the information is restricted by 41 U.S.C. chapter 21;

(2) The withholding of information from, or restricting its receipt by, the Comptroller General in the course of a protest against the award or proposed award of a Federal agency procurement contract;

(3) The release of information after award of a contract or cancellation of a procurement if such information is contractor bid or proposal information or source selection information that pertains to another procurement; or

(4) The disclosure, solicitation, or receipt of bid or proposal information or source selection information after award if disclosure, solicitation, or receipt is prohibited by law. (See 3.104-2(b)(5) and Subpart 24.2.)

FAR Part 10, "Market Research," states:

Agencies shall identify legitimate needs and evaluate trade-offs to acquire items that meet legitimate needs. Agencies shall conduct market research appropriate to the circumstances before developing new requirements documents, soliciting offers for acquisitions with an estimated value that exceeds the simplified acquisition threshold, and before awarding a task or delivery order under an indefinite delivery/indefinite quantity contract. Agencies shall use the results of market research to determine if sources capable of satisfying agency requirements exist, determine if commercial items are available and can meet agency needs, or if commercially available items could be modified to meet agency needs. Some techniques are contacting knowledgeable individuals from Government and industry, publishing requests for information, reviewing other agency acquisitions, conducting interchange meetings, and holding pre-solicitation conferences. Agencies may document the results of market research in manner appropriate to the size and complexity of the acquisition.

FAR 15.3, "Source Selection," states:

The objective of source selection is to select the proposal that represents the best value.

Agency heads are responsible for source selection. The contracting officer is designated as the source selection authority, unless the agency head appoints another individual for a particular acquisition or group of acquisitions.

The source selection authority shall (1) establish an evaluation team, tailored for the particular acquisition, that includes appropriate contracting, legal, logistics, technical, and other expertise to ensure a comprehensive evaluation of offers; (2) approve the source selection strategy or acquisition plan, if applicable, before solicitation release; (3) ensure consistency among the solicitation requirements, notices to offerors, proposal preparation instructions, evaluation factors and subfactors, solicitation provisions or contract clauses, and data requirements; (4) ensure that proposals are evaluated based solely on the factors and subfactors contained in the solicitation; (5) consider the recommendations of advisory boards or panels (if any); and (6) select the source or sources whose proposal is the best value to the Government

The contracting officer shall (1) after release of a solicitation, serve as the focal point for inquiries from actual or prospective offerors; (2) after receipt of proposals, control exchanges with offerors; and (3) award the contract(s).

The award decision is based on evaluation factors and significant subfactors that are tailored to the acquisition. Evaluation factors and significant subfactors must (1) represent the key areas of importance and emphasis to be considered in the source selection decision; and (2) support meaningful comparison and discrimination between and among competing proposals.

The evaluation factors and significant subfactors that apply to an acquisition and their relative importance, are within the broad discretion of agency acquisition officials, subject to the requirements that (1) price or cost to the Government shall be evaluated in every source selection; (2) the quality of the product or service shall be addressed in every source selection through consideration of one or more non-cost evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience; and (3) past performance shall be evaluated in all source selections for negotiated competitive acquisitions expected to exceed the simplified acquisition threshold, unless the contracting officer documents why evaluating past performance is not appropriate.

All factors and significant subfactors that will affect contract award and their relative importance shall be stated clearly in the solicitation. The rating method need not be disclosed in the solicitation. The general approach for evaluating past performance information shall be described. The solicitation shall also state, at a minimum, whether all evaluation factors other than cost or price, when combined, are (1) significantly more important than cost or price; (2) approximately equal to cost or price; or (3) significantly less important than cost or price.

Proposal evaluation is an assessment of the proposal and the offeror's ability to perform the prospective contract successfully. An agency shall evaluate competitive proposals and then assess their relative qualities solely on the factors and subfactors specified in the solicitation. Evaluations may be conducted using any rating method or combination of methods, including color or adjectival ratings, numerical weights, and ordinal rankings. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation shall be documented in the contract file.

When tradeoffs are performed, the source selection records shall include; (i) an assessment of each offeror's ability to accomplish the technical requirements; and (ii) a summary, matrix, or quantitative ranking, along with appropriate supporting narrative, of each technical proposal using the evaluation factors.

Competitive range. Agencies shall evaluate all proposals in accordance with FAR Part 15, and, if discussions are to be conducted, establish the competitive range. Based on the ratings of each proposal against all evaluation criteria, the contracting officer shall establish a competitive range comprised of all of the most highly rated proposals, unless the range is further reduced for purposes of efficiency pursuant to paragraph (c)(2) of this section. Offerors excluded or otherwise eliminated from the competitive range may request a debriefing. If an offeror's proposal is eliminated or otherwise removed from the competitive range, no further revisions to that offeror's proposal shall be accepted or considered.

Negotiations are exchanges between the Government and offerors after establishment of the competitive range. They are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions. Discussions are tailored to each offeror's proposal, and must be conducted by the contracting officer with each offeror within the competitive range. The primary objective of discussions is to maximize the Government's ability to obtain best value, based on the requirement and the evaluation factors set forth in the solicitation.

The source selection authority's (SSA) decision shall be based on a comparative assessment of proposals against all source selection criteria in the solicitation. While the SSA may use reports and analyses prepared by others, the source selection decision shall represent the SSA's independent judgment. The source selection decision shall be documented, and the documentation shall include the rationale for any business judgments and tradeoffs made or relied on by the SSA, including benefits associated with additional costs. Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision.

FAR 15.503, "Notifications to unsuccessful offerors," states:

(a) Preaward notices—

(1) Preaward notices of exclusion from competitive range. The contracting officer shall notify offerors promptly in writing when their proposals are excluded from the competitive range or otherwise eliminated from the competition. The notice shall state the basis for the determination and that a proposal revision will not be considered.

(2) Preaward notices for small business programs.

(i) In addition to the notice in paragraph (a)(1) of this section, the contracting officer shall notify each offeror in writing prior to award and upon completion of negotiations and determinations of responsibility—

- (A) When using a small business set-aside (see Subpart 19.5);
- (B) When using the HUBZone procedures in 19.1305 or 19.1307;
- (C) When using the service-disabled veteran-owned small business procedures in 19.1405; or
- (D) When using the Women-Owned Small Business Program procedures in 19.1505.

(ii) The notice shall state—

- (A) The name and address of the apparently successful offeror;
- (B) That the Government will not consider subsequent revisions of the offeror's proposal; and
- (C) That no response is required unless a basis exists to challenge the size status or small business status of the apparently successful offeror (e.g., small business concern, small disadvantaged business concern, HUBZone small business concern, service-disabled veteran-owned small business concern, economically disadvantaged women-owned

small business concern, or women-owned small business concern eligible under the Women-Owned Small Business Program).

(iii) The notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay or when the contract is entered into under the 8(a) program (see 19.805-2).

(b) Postaward notices.

(1) Within 3 days after the date of contract award, the contracting officer shall provide written notification to each offeror whose proposal was in the competitive range but was not selected for award (10 U.S.C. 2305(b)(5) and 41 U.S.C. 3704) or had not been previously notified under paragraph (a) of this section. The notice shall include—

(i) The number of offerors solicited;

(ii) The number of proposals received;

(iii) The name and address of each offeror receiving an award;

(iv) The items, quantities, and any stated unit prices of each award. If the number of items or other factors makes listing any stated unit prices impracticable at that time, only the total contract price need be furnished in the notice. However, the items, quantities, and any stated unit prices of each award shall be made publicly available, upon request; and

(v) In general terms, the reason(s) the offeror's proposal was not accepted, unless the price information in paragraph (b)(1)(iv) of this section readily reveals the reason. In no event shall an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

(2) Upon request, the contracting officer shall furnish the information described in paragraph (b)(1) of this section to unsuccessful offerors in solicitations using simplified acquisition procedures in part 13.

(3) Upon request, the contracting officer shall provide the information in paragraph (b)(1) of this section to unsuccessful offerors that received a preaward notice of exclusion from the competitive range.

FAR Part 15.506, "Postaward Debriefing of Offerors," states:

(a)(1) An offeror, upon its written request received by the agency within 3 days after the date on which that offeror has received notification of contract award in accordance with 15.503(b), shall be debriefed and furnished the basis for the selection decision and contract award.

(2) To the maximum extent practicable, the debriefing should occur within 5 days after receipt of the written request. Offerors that requested a postaward debriefing in lieu of a preaward debriefing, or whose debriefing was delayed for compelling reasons beyond contract award, also should be debriefed within this time period.

(3) An offeror that was notified of exclusion from the competition (see 15.505(a)), but failed to submit a timely request, is not entitled to a debriefing.

(4)(i) Untimely debriefing requests may be accommodated.

(ii) Government accommodation of a request for delayed debriefing pursuant to 15.505(a)(2), or any untimely debriefing request, does not automatically extend the deadlines for filing protests. Debriefings delayed pursuant to 15.505(a)(2) could affect the timeliness of any protest filed subsequent to the debriefing.

(b) Debriefings of successful and unsuccessful offerors may be done orally, in writing, or by any other method acceptable to the contracting officer.

(c) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.

(d) At a minimum, the debriefing information shall include—

(1) The Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;

(2) The overall evaluated cost or price (including unit prices) and technical rating, if applicable, of the successful offeror and the debriefed offeror, and past performance information on the debriefed offeror;

(3) The overall ranking of all offerors, when any ranking was developed by the agency during the source selection;

(4) A summary of the rationale for award;

(5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror; and

(6) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

(e) The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, the debriefing shall not reveal any information prohibited from disclosure by 24.202 or exempt from release under the Freedom of Information Act (5 U.S.C. 552) including—

(1) Trade secrets;

(2) Privileged or confidential manufacturing processes and techniques;

(3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and

(4) The names of individuals providing reference information about an offeror's past performance.

(f) An official summary of the debriefing shall be included in the contract file.

FAR 16.504, "Indefinite-quantity contracts," states:

An indefinite-quantity contract provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period. The Government places orders for individual requirements. Quantity limits may be stated as number of units or as dollar values.

Contracting officers may use an indefinite-quantity contract when the Government cannot predetermine, above a specified minimum, the precise quantities of supplies or services that the Government will require during the contract period, and it is inadvisable for the Government to commit itself for more than a minimum quantity. The contracting officer should use an indefinite-quantity contract only when a recurring need is anticipated.

FAR 16.504(c), "Multiple award preference," states:

(1) Except for indefinite-quantity contracts for advisory and assistance services, the contracting officer must, to the maximum extent practicable, give preference to making multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources.

(A) The contracting officer must determine whether multiple awards are appropriate as part of acquisition planning. The contracting officer must avoid situations in which awardees specialize exclusively in one or a few areas within the statement of work, thus creating the likelihood that orders in those areas will be awarded on a sole-source basis; however, each awardee need not be capable of performing every requirement as well as any other awardee under the contracts. The contracting officer should consider the following when determining the number of contracts to be awarded.

(1) The scope and complexity of the contract requirement.

(2) The expected duration and frequency of task or delivery orders.

(3) The mix of resources a contractor must have to perform expected task or delivery order requirements.

(4) The ability to maintain competition among the awardees throughout the contracts' period of performance.

(B) The contracting officer must not use the multiple award approach if:

- (1) only one contractor is capable of providing performance at the level of quality required because the supplies or services are unique or highly specialized;
- (2) based on the contracting officer's knowledge of the market, more favorable terms and conditions, including pricing, will be provided if a single award is made;
- (3) the expected cost of administration of multiple contracts outweighs the expected benefits of making multiple awards;
- (4) the projected task orders are so integrally related that only a single contractor can reasonably perform the work;
- (5) the total estimated value of the contract is less than the simplified acquisition threshold; or
- (6) multiple awards would not be in the best interests of the Government.

(C) The contracting officer must document the decision whether or not to use multiple awards in the acquisition plan or contract file.

(D) (1) No task or delivery order contract in an amount estimated to exceed \$112 million (including all options) may be awarded to a single source unless the head of the agency determines in writing that:

- (i) the task or delivery orders expected under the contract are so integrally related that only a single source can reasonably perform the work;
- (ii) the contract provides only for firm-fixed price (see 16.202) task or delivery orders for:
 - (A) products for which unit prices are established in the contract; or
 - (B) Services for which prices are established in the contract for the specific tasks to be performed;
- (iii) only one source is qualified and capable of performing the work at a reasonable price to the Government; or
- (iv) it is necessary in the public interest to award the contract to a single source due to exceptional circumstances.

(2) The head of the agency must notify Congress within 30 days after any determination under paragraph (c)(1)(ii)(D)(1)(iv) of this section.

(3) The requirement for a determination for a single-award contract greater than \$112 million:

- (i) is in addition to any applicable requirements of subpart 6.3; and

ii) is not applicable for architect-engineer services awarded pursuant to subpart 36.6.

Defense Federal Acquisition Regulation Supplement (DFARS)

DFARS 215.3, "Source Selection," states:

Contracting officers shall follow the principles and procedures in Director, Defense Procurement and Acquisition Policy memorandum, dated April 1, 2016, entitled, "Department of Defense Source Selection Procedures," when conducting negotiated, competitive acquisitions using FAR Part 15 procedures.

Contracting officers should conduct discussions for acquisitions with an estimated value of \$100 million or more.

DFARS 216.504, "Indefinite Quantity Contracts," states:

The senior procurement executive has the authority to make the determination authorized in FAR 16.504(c)(1)(ii)(D)(1). In accordance with section 816 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232), when making the determination at FAR 16.504(c)(1)(ii)(D)(1)(i), the senior procurement executive shall determine that the task or delivery orders expected under the contract are so integrally related that only a single source can "efficiently perform the work," instead of "reasonably perform the work" as required by the FAR.

Department of Defense Source Selection Procedures, March 31, 2016¹⁶⁸

2.3 Develop the Request for Proposals

A well-written RFP is absolutely critical to the success of the source selection. The SST shall ensure consistency between the requirements documents, SSP, and RFP. The acquisition team must ensure a clear linkage between the requirements and evaluation factors to maximize the accuracy and clarity of the RFP.

2.3.1 Evaluation Factors/Subfactors. Evaluation factors and subfactors represent those specific characteristics that are tied to significant RFP requirements and objectives having an impact on the source selection decision and which are expected to be discriminators or are required by statute/regulation. They are the uniform baseline against which each offeror's proposal is evaluated, allowing the Government to make a best value determination.

2.3.2 Evaluation Factor/Subfactor Weighting. The evaluation of factors and subfactors may be quantitative, qualitative, or a combination of both. However, numerical or percentage weighting of the relative importance of evaluation factors and subfactors shall not be used. [NOTE: Numerical or percentage weighting of the relative importance of evaluation factors and subfactors is different than

¹⁶⁸ The DFARS directed contracting officers to use the procedures dated April 1, 2016. The cover memorandum for the procedures is dated April 1, 2016. The date on the procedures is actually March 31, 2016.

assigning quantifiable or monetized value tradeoffs in evaluating an offeror's proposal as addressed in Appendix B.]

2.3.3 The solicitation may prescribe minimum "go/no go" or "pass/fail" gates as criteria that an offeror's proposal must meet before advancing in the proposal evaluation process.

2.3.4 Evaluation Factor/Subfactor Documentation. The evaluation factors and subfactors shall be set forth in the solicitation in enough depth to communicate how requirements will be evaluated. The evaluation factors and subfactors shall be the primary determinant of the detailed information requested in the solicitation's instructions to offerors. If subfactors are used, they are to be evaluated separately. All source selections shall evaluate cost or price and the quality of the product or service.

2.3.4.1 Cost or Price. The Government shall evaluate the cost or price of the supplies or services being acquired (see FAR 15.305(a)(1) and 15.404-1(a)(1)). See paragraph 3.1.1 for more information.

2.3.4.2 Quality of Product or Service. In accordance with FAR 15.304(c)(2), the quality of product or service shall be addressed in every source selection through consideration of one or more non-cost evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience.

NOTE: The term "technical," as used below and throughout the document, refers to non-cost factors other than past performance. More than one technical factor can be used and titled to match the specific evaluation criteria appropriate for the RFP. Unless stated otherwise in this document, the ratings in Table 2A and Table 2B or Table 3 shall be used for all quality of product or service factors other than past performance, regardless of the technical factor title.

2.3.4.2.1 Technical. The purpose of the technical factor(s) is to assess the offeror's proposed approach, as detailed in its proposal, to satisfy the Government's requirements. There are many aspects which may affect an offeror's ability to meet the solicitation requirements. Examples include technical approach, risk, management approach, personnel qualifications, facilities, and others. The evaluation of risk is related to the technical assessment. Consistent with USD(AT&L) Better Buying Power initiatives and dependent on the best value method selected, coordinate with the RO to provide offerors the monetary value of performance or capabilities above threshold requirements in the RFP whenever possible when deemed to be in the best interest of the Government.

The technical factor may be divided into subfactors that represent the specific areas that are significant enough to be discriminators and to have an impact on the source selection decision. When subfactors are used, establish the minimum number necessary for the evaluation of proposals.

Technical Risk. Risk assesses the degree to which the offeror's proposed technical approach for the requirements of the solicitation may cause disruption of schedule, increased costs, degradation of performance, the need for increased Government

oversight, or increased likelihood of unsuccessful contract performance. All evaluations that include a technical evaluation factor shall also consider risk, separately or in conjunction with technical factors, with the exception of LPTA where the technical proposal is evaluated only for acceptability based on stated criteria. Risk can be evaluated in one of two following ways.

- As a separate risk rating assigned at the technical factor or subfactor level (see paragraph 3.1.2.1).
- As one aspect of the technical evaluation, inherent in the technical evaluation factor or subfactor ratings (see paragraph 3.1.2.2).

2.3.4.2.2 Past Performance. The past performance evaluation factor assesses the degree of confidence the Government has in an offeror's ability to supply products and services that meet users' needs, based on a demonstrated record of performance. Unless waived by the PCO, after consultation with the SSA and PM (if a PM is assigned), a past performance evaluation is required in accordance with FAR 15.304(c)(3). A past performance evaluation may be accomplished for acquisitions below these thresholds at the discretion of the SSA. Past performance need not be evaluated if the PCO documents the reason past performance is not an appropriate evaluation factor for the acquisition according to FAR 15.304(c)(3)(iii). With appropriate parameters to assess past performance recency and relevancy, ratings of "acceptable" or "unacceptable" may be used (see Appendix C, Table C-2) if past performance is not a discriminating factor in the source selection.

2.3.4.2.3 Small Business Participation. Where required by FAR 15.304(c)(4) and DFARS 215.304(c)(i), the SSEB shall evaluate the extent of participation of small business concerns. This may be accomplished by:

- establishing a separate Small Business Participation evaluation factor, or
- establishing a Small Business Participation subfactor under the technical factor, or
- considering Small Business Participation within the evaluation of one of the technical subfactors.

With appropriate parameters to measure the extent of small business participation, Small Business participation may be evaluated using an "acceptable" or "unacceptable" rating (see Table 6).

2.3.5 Relative Importance of Factors. If using the tradeoff source selection process, all factors and significant subfactors that will affect contract award and their relative importance shall be stated clearly in the solicitation according to FAR 15.304(d). The solicitation shall state, at a minimum, whether all evaluation factors other than cost or price, when combined, are (1) significantly more important than cost or price; (2) approximately equal to cost or price; or (3) significantly less important than cost or price as stated in FAR 15.304(e).

APPENDIX D – STANDARDS AND DISCLOSURES RELATED TO ALLEGED MISCONDUCT IN THE JEDI CLOUD PROCUREMENT

Title 5, C.F.R., § 2634.202, “Public Filer Defined”

The term *public filer* includes each officer or employee in the executive branch, including a special Government employee as defined in 18 U.S.C. 202(a), whose position is classified above GS-15 of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate equal to or greater than 120% of the minimum rate of basic pay for GS-15 of the General Schedule. The terms also includes other categories of officers or employees that are not germane to this report.

Title 18, U.S.C. § 208, “Crimes and Criminal Procedure”

This section of the U.S.C. states:

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest— Shall be subject to the penalties set forth in section 216 of this title.

(b) Subsection (a) shall not apply if the officer or employee first advises the Government official responsible for appointment to his or her position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee.

Title 18, U.S.C. § 1001, “Statements or entries generally”

This section of the U.S.C. states:

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully: (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, has committed the offense of False Statements.

Executive Order 13770, "Ethics Commitments by Executive Branch Appointees," January 28, 2017

The order requires every appointee in every executive agency appointed on or after January 20, 2017, to sign a pledge. This pledge includes a requirement for appointees to not, for a period of 2 years from the date of appointment, participate in any particular matter involving specific parties that was directly and substantially related to the appointee's former employer or clients, including regulations and contracts.

DoD 5500.07-R, "Joint Ethics Regulation (JER)," August 30, 1993, including changes 1-7 (November 17, 2011)

The JER provides a single source of standards of ethical conduct and ethics guidance for DoD employees. Chapter 2, Section 1, of the JER, "Standards of Ethical Conduct," incorporates Title 5, Code of Federal Regulations (CFR), Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety.

Subpart A, "General Provisions"**Section 2635.101(b), "General Principles," states:**

Employees shall not use public office for private gain. They shall act impartially and not give preferential treatment to any private organization or individual. They shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities. They shall endeavor to avoid any actions creating the appearance that they are violating the law or ethical standards set forth in Part 2635. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

Section 2635.107, "Ethics Advice," states:

Employees who have questions about the application of this part or any supplemental agency regulations to particular situations should seek advice from an agency ethics official. Disciplinary action for violating this part or any supplemental agency regulations will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an agency ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances. Where the employee's conduct violates a criminal statute, reliance on the advice of an agency ethics official cannot ensure that the employee will not be prosecuted under that statute. Disclosures made by an employee to an agency ethics official are not protected by an attorney-client privilege. An agency ethics official is required by 28 U.S.C. 535 to report any information he receives relating to a violation of the criminal code, title 18 of the United States Code.

Subpart D, "Conflicting Financial Interests"**Section 2635.402, "Disqualifying financial interests," states:**

An employee is prohibited by criminal statute, Title 18, United States Code, section 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his

knowledge, he or any person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest. Unless there is a waiver or exemption, an employee shall disqualify himself from participating in such matters by not participating in them. An employee responsible for his own assignment [to a particular matter] should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified.

The term particular matter encompasses only matters that involve deliberation, decision, or action focused on the interests of specific persons, or a discrete and identifiable class of persons. Particular matters include a contract, and may include policy-making that is narrowly focused on the interests of a discrete and identifiable class of persons. It does not include the consideration or adoption of broad policy options that are directed at the interests of a large and diverse group of persons.

A particular matter will have a direct effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A particular matter that has an effect on a financial interest only as a consequence of its effects on the general economy does not have a direct effect within the meaning of this subpart.

A particular matter will have a predictable effect if there is a real, as opposed to a speculative possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial.

If a particular matter involves a specific party or parties, generally the matter will at most only have a direct and predictable effect, for purposes of this subpart, on a financial interest of the employee in or with a party, such as the employee's interest by virtue of owning stock. There may, however, be some situations in which, under the above standards, a particular matter will have a direct and predictable effect on an employee's financial interests in or with a nonparty. For example, if a party is a corporation, a particular matter may also have a direct and predictable effect on an employee's financial interests through ownership of stock in an affiliate, parent, or subsidiary of that party. Similarly, the disposition of a protest against the award of a contract to a particular company may also have a direct and predictable effect on an employee's financial interest in another company listed as a subcontractor in the proposal of one of the competing offerors.

To participate personally means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate substantially means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

Unless the employee is authorized to participate in the particular matter by virtue of a waiver or exemption described in paragraph (d) of this section or because the interest has been divested in accordance with paragraph (e) of this section, an employee shall disqualify himself from participating in a particular matter in which, to his knowledge, he or a person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest. Disqualification is accomplished by not participating in the particular matter.

An employee who becomes aware of the need to disqualify himself from participation in a particular matter to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignment should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he is disqualified.

A DoD employee who is required to disqualify himself from participation in a particular matter to which he has been assigned shall provide written notice of disqualification to his supervisor upon determining that he will not participate in the matter.

Subpart E, "Impartiality in Performing Official Duties"

Section 2635.502, "Personal and business relationships," states:

Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship (including a relative with whom the employee has a close personal relationship) is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee.

Section 2635.503, "Extraordinary Payments From Former Employers," states:

Unless a waiver is granted, an employee shall be disqualified for 2 years from participating in any particular matter in which a former employer is a party or represents a party if he received an extraordinary payment in excess of \$10,000 from that person prior to entering Government service, if the payment is made on the basis of a determination made after it became known to the former employer that the individual was being considered for or had accepted a Government position, and if the payment is made other than pursuant to the former employer's established compensation, partnership, or benefits program. A compensation, partnership, or benefits program will be deemed an established program if it is contained in bylaws, a contract or other written form, or if there is a history of similar payments made to others not entering into Federal service. The 2-year period of disqualification begins to run on the date that the extraordinary payment is received.

Subpart F, "Seeking Other Employment"**Section 2635.602, "Applicability and Related Considerations,"** states:

An employee who is seeking employment or who has an arrangement concerning prospective employment must recuse himself if particular matters in which the employee will be participating personally and substantially would, to the employee's knowledge, directly and predictably affect the financial interests of a prospective employer or of a person with whom the employee has an arrangement concerning prospective employment. An employee who is seeking employment with a person whose financial interests are not, to the employee's knowledge, affected directly and predictably by particular matters in which the employee participates personally and substantially has no obligation to recuse under this subpart. In addition, nothing in this subpart requires an employee, other than a public filer, to notify anyone that the employee is seeking employment unless a notification is necessary to implement a recusal pursuant to Section 2635.604. A public filer who negotiates for or has an agreement of future employment or compensation must comply with the notification requirements in Section 2635.607.

Section 2635.604, "Recusal While Seeking Employment," states:

An employee may not participate personally and substantially in a particular matter that, to the employee's knowledge, has a direct and predictable effect on the financial interests of a prospective employer with whom the employee is seeking employment. Recusal is accomplished by not participating in the particular matter.

Section 2635.607, "Notification Requirements for Public Financial Disclosure Report Filers Regarding Negotiations for or Agreement of Future Employment or Compensation," states:

A public filer who is negotiating for or has an agreement of future employment or compensation with a non-Federal entity must file a written statement notifying an agency ethics official of such negotiation or agreement within three business days after commencement of the negotiation or agreement. A public filer who files a notification statement must also file with an agency ethics official a notification of recusal whenever there is a conflict of interest or appearance of a conflict of interest with the non-Federal entity identified in the notification statement. The notification statement and the recusal statement may be contained in a single document or in separate documents.

Subpart G, "Misuse of Position"**Section 2635.702, "Use of public office for private gain,"** states:

An employee shall not use his public office for his own private gain, for the endorsement of any product, service, or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

Subsection 2635.702(c) states:

An employee shall not use or permit the use of his Government position or title or any authority associated with his public office to endorse any product, service, or enterprise.

Subsection 2635.703, "Use of Non-Public Information," states:

An employee shall not engage in a financial transaction using non-public information, nor allow the improper use of non-public information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure.

JER, Chapter 2, Section 2, "Supplemental Standards of Ethical Conduct For Employees of the Department of Defense"**Paragraph 2-204, "Standard for Accomplishing Disqualification"****Subparagraph 2-204a, "Disqualifying Financial Interests,"** states:

A DoD employee who is required, in accordance with 5 CFR section 2635.402(c), to disqualify himself from participation in a particular matter to which he has been assigned shall, notwithstanding the guidance in 5 CFR section 2635.402, provide written notice of disqualification to his supervisor upon determining that he will not participate in the matter.

Subparagraph 2-204b, "Disqualification to Ensure Impartiality," states:

A DoD employee who is required, in accordance with 5 CFR section 2635.502, to disqualify himself from participation in a particular matter involving specific parties to which he has been assigned shall, notwithstanding the guidance in 5 CFR section 2635.502, provide written notice of disqualification to his supervisor upon determining that he will not participate in the matter.

JER, Chapter 3, "Activities with Non-Federal Entities"**Section 2, "Official Participation in Non-Federal Entities"****Paragraph 3-204, "Impartiality of DoD Employees,"** states:

DoD employees are generally prohibited from engaging in any official activities in which a non-Federal entity is a party or has a financial interest if the DoD employee is an active participant in the non-Federal entity or has been an officer in the non-Federal entity within the last year.

Paragraph 3-209, "Endorsement," states:

Endorsement of a non-Federal entity, event, product, service, or enterprise may neither be stated nor implied by DoD or DoD employees in their official capacities and titles, positions, or organization names may not be used to suggest official endorsement or preferential treatment of any non-Federal entity.

Federal Acquisition Regulation (FAR), Volume I, March 2005**FAR 2.101, "Definitions,"** states:

“Organizational conflict of interest” means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

“Source selection information” means information that is prepared for use by an agency for the purpose of evaluating a bid or proposal to enter into an agency procurement contract, if that information has not been previously made available to the public or disclosed publicly, including (1) bid prices submitted in response to an agency invitation for bids, or lists of those bid prices before bid opening; (2) proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices; (3) source selection plans; (4) technical evaluation plans; (5) technical evaluations of proposals; (6) cost or price evaluations of proposals; (7) competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract; (8) rankings of bids, proposals, or competitors; (9) reports and evaluations of source selection panels, boards, or advisory councils; or (10) other information marked as “Source Selection Information.”

FAR 3.101, “Standards of Conduct,” states:

Government business shall be conducted in a manner above reproach, with complete impartiality, and with preferential treatment for none. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. Official conduct must be such that [employees] would have no reluctance to make a full public disclosure of their actions.

FAR 3.104, “Procurement Integrity”

FAR 3.104-1, “Definitions,” states:

“Contractor bid or proposal information” means information submitted to a Federal agency as part of or in connection with a proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly. Information includes (1) cost or pricing data, (2) indirect costs and direct labor rates, (3) proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation, (4) information marked by the contractor as “contractor bid or proposal information” in accordance with applicable law or regulation, and (5) information offerors mark as restricted in their proposals.

“Federal agency procurement” means the acquisition, using competitive procedures and awarding a contract, of goods or services from non-Federal sources by a Federal agency using appropriated funds.

“Participating personally and substantially in a Federal agency procurement” means active and significant involvement of an official in (1) drafting, reviewing, or approving the specification or statement of work for the procurement, (2) preparing or developing the solicitation, (3) evaluating bids or proposals, or selecting a source, (4) negotiating price or terms and conditions of the contract, or (5) reviewing and approving the award of the contract.

“Participating personally” means participating directly, and includes the direct and active supervision of a subordinate's participation in the matter.

“Participating substantially” means that the official's involvement is of significance to the matter. Substantial participation requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Participation may be substantial even though it is not determinative of the outcome of a particular matter. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. However, the review of procurement documents solely to determine compliance with regulatory, administrative, or budgetary procedures, does not constitute substantial participation in a procurement.

Generally, an official will not be considered to have participated personally and substantially in a procurement solely by participating in (1) Agency-level boards, panels, or other advisory committees that review program milestones or evaluate and make recommendations regarding alternative technologies or approaches for satisfying broad agency-level missions or objectives; (2) the performance of general, technical, engineering, or scientific effort having broad application not directly associated with a particular procurement, notwithstanding that such general, technical, engineering, or scientific effort subsequently may be incorporated into a particular procurement; or (3) clerical functions supporting the conduct of a particular procurement.

FAR 3.104-2, “General,” states that contacts with an offeror during the conduct of an acquisition may constitute “seeking employment.” Government officers and employees (employees) are prohibited by 18 U.S.C. 208 and 5 CFR Part 2635 from participating personally and substantially in any particular matter that would affect the financial interests of any person with whom the employee is seeking employment. An employee who engages in negotiations or is otherwise seeking employment with an offeror or who has an arrangement concerning future employment with an offeror must comply with the applicable disqualification requirements of 5 CFR 2635.604 and 2635.606. The statutory prohibition in 18 U.S.C. 208 also may require an employee’s disqualification from participation in the acquisition even if the employee’s duties may not be considered “participating personally and substantially,” as this term is defined in FAR 3.104-1.

FAR 3.104-3, “Statutory and Related Prohibitions, Restrictions, and Requirements,” prohibits obtaining or disclosing procurement information other than as provided by law and states, in part, that a person must not knowingly disclose [or obtain] contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

If an agency official, participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold, contacts or is contacted by a person who is an offeror in that Federal agency procurement regarding possible non-Federal employment for that official, the official must (1) promptly report the contact in writing to the official’s supervisor and to the agency ethics official; and (2) either reject the possibility of non-Federal employment or disqualify himself or herself from further personal and substantial participation in that Federal agency procurement.

FAR 3.104-4, "Disclosure, Protection, and Marking of Contractor Bid or Proposal and Source Selection Information, states that individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, are not restricted or prohibited, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur.

FAR Part 15, "Contracting by Negotiation"

FAR 15.201, "Exchanges With Industry Before Receipt of Proposals," states that exchanges of information among all interested parties, from the earliest identification of a requirement through receipt of proposals, are encouraged, consistent with FAR 3.104. Interested parties include potential offerors, end users, Government acquisition and supporting personnel, and others involved in the conduct or outcome of the acquisition. General information about agency mission needs and future requirements may be disclosed at any time. The purpose of exchanging information is to improve the understanding of Government requirements and industry capabilities. Agencies are encouraged to promote early exchanges of information about future acquisitions. Some techniques to promote early exchanges of information are (1) industry or small business conferences, (2) public hearings, (3) market research, (4) one-on-one meetings with potential offerors, (5) presolicitation notices, (6) draft RFPs, (7) RFIs, (8) presolicitation or preproposal conferences, and (9) site visits.

Secretary Mattis Ethics Documents

January 5, 2017

Honorable Jennifer M. O'Connor
General Counsel and
Designated Agency Ethics Official
Office of the General Counsel
1600 Defense Pentagon
Department of Defense
Washington, DC 20301

Dear Ms. O'Connor:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Secretary of Defense.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Upon confirmation, I will resign from my position with the Hoover Institution. I previously resigned from my positions with the Center for a New American Security, the Tri-Cities Food Bank, the Marines' Memorial Club, and the Marine Corps Scholarship Foundation. For a period of one year after my resignation from each of these entities, I will not participate personally and substantially in any particular matter involving specific parties in which I know that entity is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

Upon confirmation, I will resign from my position with General Dynamics. For a period of one year after my resignation, I will not participate personally and substantially in any particular matter involving specific parties in which I know General Dynamics is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). I hold the following interests in General Dynamics: stock, unvested restricted stock, vested stock options, and unvested stock options. Upon my appointment, I will forfeit all of my restricted stock and my stock options that have not, as of the date of my appointment, vested according the normal schedule for vesting. Within 90 days of my confirmation, I will divest all of my General Dynamics stock and vested stock options. I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial

Honorable Jennifer M. O'Connor
Page 2

interests of General Dynamics until I have divested these holdings, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

I previously resigned from my position with Theranos, Inc. I hold Theranos, Inc. stock. The Department has determined that it is not necessary at this time for me to divest this stock because the duties of the position of Secretary are unlikely to involve particular matters affecting the financial interests of Theranos, Inc. For so long as I hold this stock, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of Theranos, Inc., unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). If I divest my Theranos, Inc. stock, I will not, for a period of one year after my resignation, participate personally and substantially in any particular matter involving specific parties in which I know Theranos, Inc. is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

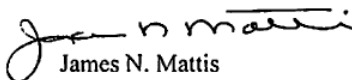
I have a publishing agreement with Random House Publishers for royalties from the future publication of an untitled book that I have written. I have completed the writing of this book and all other activities required under the publishing agreement. During my appointment, I will not engage in any writing, editing, or promotional activities associated with the book and will not provide any other services under the publishing agreement. I will not participate personally and substantially in any particular matter involving specific parties in which I know Random House Publishers is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

During my appointment to the position of Secretary, if I have a managed account, I will ensure that the account manager does not purchase any new assets other than cash, cash equivalents, obligations of the United States, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), and municipal bonds.

I understand that I may be eligible to request a Certificate of Divestiture for qualifying assets and that a Certificate of Divestiture is effective only if obtained prior to divestiture. Regardless of whether I receive a Certificate of Divestiture, I will ensure that all divestitures discussed in this agreement occur within the agreed upon timeframes and that all proceeds are invested in non-conflicting assets.

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely,


James N. Mattis

FEB 08 2017

Ruth M.S. Vetter
Alternate Designated Agency Ethics Official
Office of the General Counsel
1600 Defense Pentagon
Department of Defense
Washington, DC 20301

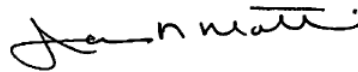
Dear Ms. Vetter:

The purpose of this letter is to supplement my ethics agreement signed on January 5, 2017. The following information supplements my ethics agreement:

I understand that as an appointee I will be required to sign the Ethics Pledge required under the Executive Order dated January 28, 2017 ("Ethics Commitments by Executive Branch Appointees") and that I will be bound by the requirements and restrictions therein in addition to the commitments I made in the ethics agreement I signed on January 5, 2017.

I have been advised that this supplement to my ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely,



James N. Mattis



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

JAN 25 2017

MEMORANDUM FOR DESIGNATED AGENCY ETHICS OFFICIAL

SUBJECT: SCREENING ARRANGEMENT

This memorandum is to inform you of the screening arrangement I have implemented to help ensure that I do not participate in "particular matters" with which I have a personal or business relationship. My obligations are set forth in the Ethics Agreement I signed prior to my confirmation by the United States Senate.

ETHICS AGREEMENT OBLIGATIONS

Prior positions

Unless you, as Designated Agency Ethics Official, authorize me to participate, I understand that, in accordance with 5 C.F.R. §2635.502, I am disqualified from participating in any particular matter involving specific parties in which any of the following entities in which I previously held a position is a party or represents a party until on or about January 21, 2018:

General Dynamics	Hoover Institution
Theranos, Inc.	Center for a New American Security
Marines' Memorial Club	Marine Corps Scholarship Foundation.
Tri-Cities Food Bank (Kennewick, WA)	

Stock holdings

Unless I receive a waiver or qualify for a regulatory exemption, I understand I am disqualified from participating in any "particular matter involving specific parties" that to my knowledge has a direct and predictable effect on General Dynamics until I have divested all my General Dynamics stock and stock options. I understand I have agreed to divest those holding no later than 90 days from my confirmation or April 20, 2017. In sum, until I divest any disqualifying interest in General Dynamics, you, in your capacity as Designated Agency Ethics Official, may *not* authorize me to participate in particular matter involving the financial interest of General Dynamics. I would have to seek a written waiver pursuant to 18 U.S.C. § 208(b)(1) from you in coordination with the Office of Government Ethics.

Unless I receive a waiver or qualify for a regulatory exemption, I understand I am disqualified from participating in any "particular matter involving specific parties"



that to my knowledge has a direct and predictable effect on Theranos, Inc., for so long as I hold any interest in the company.

Book deal

I have a publishing agreement with Random House Publishers for royalties from the future publication of an untitled book that I have written. I understand I may not participate personally and substantially in any particular matter involving specific parties in which I know Random House Publishers is a party or represents a party, unless you, as Designated Agency Ethics Official, authorize me to participate.

SCREENING ARRANGEMENTS:

I am directing that the screeners identified below direct all particular matters involving the entities set forth above to the Deputy Secretary, or, in his or her absence, another senior Defense official for appropriate disposition. If the Deputy Secretary or alternate official believes my participation in a particular matter is important, he or she will contact you, the Designated Agency Ethics Official, via the DoD Standards of Conduct Office (SOCO). If you determine that the interest of the Government in my participation outweigh any appearance of impropriety, you will, depending on the circumstances, make a written determination specifically authorizing my participation in the particular matter pursuant to 5 C.F.R. § 2635.502 or request a waiver pursuant to 18 U.S.C. § 208(b)(1).

In order to ensure that I do not participate in matters relating to these entities without appropriate approval or waiver, I am taking the following steps:

- I am instructing my Chief of Staff, Military Assistants, and other designated Administrative Assistants to screen all matters directed to my attention that involve outside entities, or that require my participation, to determine if they involve any of the individuals, entities, or organizations listed above.
- If any screener determines that any of these entities or organizations is or represents a party in the matter, he or she will refer the matter to the Deputy Secretary or appropriate alternate for action or assignment without my knowledge or involvement.
- In order to help ensure that I do not inadvertently participate in matters from which I should be recused, I am directing each of my screeners to seek the assistance of SOCO if he or she is uncertain whether I may participate in a matter.

*copy
HOLS
MTC
w/ EXC & CC
HOLUBS*

In consultation with SOCO, I will revise and update this memorandum if warranted by changed circumstances, including changes in my financial interests, my personal or business relationships, or the nature of my official duties. I will provide a copy of the revised screening arrangement memorandum to my special assistant and to you.


James N. Mattis

cc:
Deputy Secretary of Defense
Chief of Staff
Immediate Office Staff
DoD Standards of Conduct Office



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

FEB 08 2017

MEMORANDUM FOR DESIGNATED AGENCY ETHICS OFFICIAL

SUBJECT: SCREENING ARRANGEMENT

This memorandum is to inform you of the updated screening arrangement I have implemented to help ensure that I do not participate in "particular matters" with which I have a personal or business relationship. My obligations are set forth in the Ethics Agreement I signed prior to my confirmation by the United States Senate, and amended to acknowledge my obligations under the Administration's Ethics Pledge. These arrangements supersede those dated January 25, 2017.

ETHICS PLEDGE OBLIGATIONS:

Prior positions

Pursuant to the Administration's Ethics Pledge, unless I am granted a waiver pursuant to Section 3 of Executive Order 13490, and, in my first year of service, unless you, as Designated Agency Ethics Official, authorize me to participate, I understand that, I am disqualified from participating in any particular matter involving specific parties in which any of the following entities in which I previously held a position is a party or represents a party for two years until on or about January 21, 2019:

General Dynamics	Hoover Institution
Theranos, Inc.	Center for a New American Security
Marines' Memorial Club	Marine Corps Scholarship Foundation.
Tri-Cities Food Bank (Kennewick, WA)	

ETHICS AGREEMENT OBLIGATIONS

Stock holdings

Unless I receive a waiver or qualify for a regulatory exemption, I understand I am disqualified from participating in any "particular matter involving specific parties" that to my knowledge has a direct and predictable effect on General Dynamics until I have divested all my General Dynamics stock and stock options. I understand I have agreed to divest those holding no later than 90 days from my confirmation or April 20, 2017. In sum, until I divest any disqualifying interest in General Dynamics, you, in your capacity as Designated Agency Ethics Official, may *not* authorize me to participate in particular matter involving the financial interest of General Dynamics. I



would have to seek a written waiver pursuant to 18 U.S.C. § 208(b)(1) from you in coordination with the Office of Government Ethics.

Unless I receive a waiver or qualify for a regulatory exemption, I understand I am disqualified from participating in any "particular matter involving specific parties" that to my knowledge has a direct and predictable effect on Theranos, Inc., for so long as I hold any interest in the company.

Book deal

I have a publishing agreement with Random House Publishers for royalties from the future publication of an untitled book that I have written. I understand I may not participate personally and substantially in any particular matter involving specific parties in which I know Random House Publishers is a party or represents a party, unless you, as Designated Agency Ethics Official, authorize me to participate.

SCREENING ARRANGEMENTS:

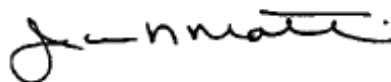
I am directing that the screeners identified below direct all particular matters involving the entities set forth above to the Deputy Secretary, or, in his or her absence, another senior Defense official for appropriate disposition. If the Deputy Secretary or alternate official believes my participation in a particular matter is important, he or she will contact you, the Designated Agency Ethics Official, via the DoD Standards of Conduct Office (SOCO). If you determine that the interest of the Government in my participation outweigh any appearance of impropriety, you will, depending on the circumstances, make a written determination specifically authorizing my participation in the particular matter pursuant to 5 C.F.R. § 2635.502 or request a waiver pursuant to 18 U.S.C. § 208(b)(1).

In order to ensure that I do not participate in matters relating to these entities without appropriate approval or waiver, I am taking the following steps:

- I am instructing my Chief of Staff, Military Assistants, Executive Secretary, and other designated Administrative Assistants to screen all matters directed to my attention that involve outside entities, or that require my participation, to determine if they involve any of the individuals, entities, or organizations listed above.
- If any screener determines that any of these entities or organizations is or represents a party in the matter, he or she will refer the matter to the Deputy Secretary or appropriate alternate for action or assignment without my knowledge or involvement.

- In order to help ensure that I do not inadvertently participate in matters from which I should be recused, I am directing each of my screeners to seek the assistance of SOCO if he or she is uncertain whether I may participate in a matter.

In consultation with SOCO, I will revise and update this memorandum if warranted by changed circumstances, including changes in my financial interests, my personal or business relationships, or the nature of my official duties. I will provide a copy of the revised screening arrangement memorandum to my special assistant and to you.



cc:
Deputy Secretary of Defense
Chief of Staff
Executive Secretary
Immediate Office Staff
DoD Standards of Conduct Office



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

12/20/2018

MEMORANDUM FOR DESIGNATED AGENCY ETHICS OFFICIAL

SUBJECT: SCREENING ARRANGEMENT EFFECTIVE JANUARY 21, 2019

This memorandum is to inform you of the screening arrangement I have updated and implemented to help ensure that I do not participate in "particular matters" with which I have a personal or business relationship. My obligations, including those expired with the passage of two years from my appointment, were set forth in the Ethics Agreement I signed prior to my confirmation by the United States Senate. These updated arrangements are effective on January 21, 2019 and supersede those dated January 25, 2017.

ETHICS AGREEMENT OBLIGATIONS

Stock holding

Unless I receive a waiver or qualify for a regulatory exemption, I understand I am disqualified from participating in any "particular matter involving specific parties" that to my knowledge has a direct and predictable effect on Theranos, Inc., for so long as I hold any interest in the company.

Book deal

I have a publishing agreement with Random House Publishers for royalties from the future publication of an untitled book that I have written. I understand I may not participate personally and substantially in any particular matter involving specific parties in which I know Random House Publishers is a party or represents a party, unless you, as Designated Agency Ethics Official, authorize me to participate.

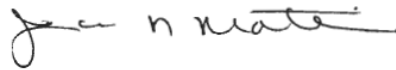
SCREENING ARRANGEMENTS:

I am directing that the screeners identified below direct all particular matters involving the entities set forth above to the Deputy Secretary, or, in his or her absence, another senior Defense official for appropriate disposition. If the Deputy Secretary or alternate official believes my participation in a particular matter is important, he or she will contact you, the Designated Agency Ethics Official, via the DoD Standards of Conduct Office (SOCO). If you determine that the interest of the Government in my participation outweighs any appearance of impropriety, you will, depending on the circumstances, make a written determination specifically authorizing my participation in the particular matter pursuant to 5 C.F.R. § 2635.502 or request a waiver pursuant to 18 U.S.C. § 208(b)(1).

In order to ensure that I do not participate in matters relating to these entities without appropriate approval or waiver, I am taking the following steps:

- I am instructing my Chief of Staff, Executive Secretary, Military Assistants, and other designated Administrative Assistants to screen all matters directed to my attention that involve outside entities, or that require my participation, to determine if they involve any of the individuals, entities, or organizations listed above.
- If any screener determines that any of these entities or organizations is or represents a party in the matter, he or she will refer the matter to the Deputy Secretary or appropriate alternate for action or assignment without my knowledge or involvement.
- In order to help ensure that I do not inadvertently participate in matters from which I should be recused, I am directing each of my screeners to seek the assistance of SOCO if he or she is uncertain whether I may participate in a matter.

In consultation with SOCO, I will revise and update this memorandum if warranted by changed circumstances, including changes in my financial interests, my personal or business relationships, or the nature of my official duties. I will provide a copy of the revised screening arrangement memorandum to my special assistant and to you.



cc:
Deputy Secretary of Defense
Chief of Staff
Executive Secretary
Immediate Office Staff
DoD Standards of Conduct Office

Ms. Donnelly Ethics Documents

New Entrant Report | U.S. Office of Government Ethics; 5 C.F.R. part 2634 | Form Approved: OMB No. (3209-0001)(March 2014)

Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278e)

Filer's Information

DONNELLY, SALLY
Senior Advisor to Secretary of Defense, OSD, Office of the Secretary of Defense
Date of Appointment: 01/21/2017

Other Federal Government Positions Held During the Preceding 12 Months:
Advisor, Defense Business Board, 1/2015 - 1/2016

Electronic Signature - I certify that the statements I have made in this form are true, complete and correct to the best of my knowledge.
eSigned in FDM by:
SALLY DONNELLY
User ID: [REDACTED]
05/17/2017

Agency Ethics Official's Opinion - On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations(Subject to any comments below).
eSigned in FDM by:
[REDACTED]
User ID: [REDACTED]
08/30/2017

Other review conducted by
Supervisor:
eSigned in FDM by:
KEVIN M. SWEENEY
User ID: 4C72DC3B5E257D4D
07/27/2017

U.S. Office of Government Ethics Certification

Comments of Reviewing Officials (public annotations):

PART #	REFERENCE	COMMENT
2.	2 SBD Advisors LLC	(08/30/17, [REDACTED]): Confirmed that this asset actually has \$0 value to filer as she no longer has any stake in the company. ADAEO Clarification: Filer confirmed this was total sale of filer's partial interest.

2. 13 Personal Salary / Distributions (SBD Advisors) (08/30/17, [REDACTED]): Filer earned an additional \$20,833 for work in CY 2017.
 ADAEO Clarification: Filer confirmed that income received in 2017 was for work performed in 2016.

1. Filer's Positions Held Outside United States Government

#	NAME	CITY, STATE	BOE TYPE	POSITION	FROM	TO
1	American Friends of the Black Stork	New York, NY, USA	Non-Profit Organization	Director	01/2013	06/2015
2	Donnelly Seaview LLC	Columbia, SC, USA	Business Enterprise	co-owner	11/2012	Present
3	Imperatis	Arlington, VA, USA	Business Enterprise	Director	06/2014	12/2016
4	SBD Advisors	Washington, DC, USA	Business Enterprise	Officer	02/2012	01/2017

2. Filer's Employment Assets & Income and Retirement Accounts

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	Time Warner Employee Savings Plan(401K)	N/A	\$50,001 - \$100,000		None (or less than \$201)
1.1	Time Warner Inc. Common Stock	No	\$1,001 - \$15,000	Dividends	\$201 - \$1,000
1.2	Time Warner Large Cap Value Fund	No	\$1,001 - \$15,000		None (or less than \$201)
1.3	Time Warner Growth Fund	No	\$15,001 - \$50,000		None (or less than \$201)
1.4	Capital Preservation Fund	No	\$1,001 - \$15,000		None (or less than \$201)
2	SBD Advisors LLC	N/A	\$1,000,001 - \$5,000,000	Partial sale/SBD	\$390,000
3	Donnelly Seaview LLC - Columbia, SC (Residential Real Estate)	N/A	\$500,001 - \$1,000,000	Rent and Royalties	\$5,001 - \$15,000
4	Calvert Balanced Portfolio Fund - A	Yes	\$1,001 - \$15,000	Dividends, Capital Gains	\$201 - \$1,000
5	"TEGNA Common Stock (Sole Ownership)"	Yes	\$100,001 - \$250,000	Dividends	\$2,501 - \$5,000
6	TEGNA Common Stock (Joint Ownership)	Yes	\$100,001 - \$250,000	Dividends	\$201 - \$1,000
7	T. Rowe Price Diversified Mutual Funds (Joint Account with Spouse)	N/A	\$250,001 - \$500,000	Dividends, Capital Gains	\$1,001 - \$2,500
7.1	T. Rowe Price Capital Opportunity (PRCOX) (Joint Account with Spouse)	Yes	\$15,001 - \$50,000	Dividends, Capital Gains	\$201 - \$1,000
7.2	T. Rowe Price New Era Fund (PRNEX) (Joint Account with Spouse)	Yes	\$15,001 - \$50,000	Dividends	\$201 - \$1,000
7.3	T. Rowe Price Science & Technology Fund (PRSCX) (Joint Account with Spouse)	Yes	\$1,001 - \$15,000	Dividends, Capital Gains	\$201 - \$1,000
7.4	T. Rowe Price TRP Capital Appreciation (Joint Account with Anna Rumer)	Yes	\$15,001 - \$50,000	Dividends, Capital Gains	\$201 - \$1,000
7.5	T. Rowe Price TRP New Era (Joint Account with Anna Rumer)	Yes	\$15,001 - \$50,000	Dividends	\$201 - \$1,000
8	Gannett Investments Common Stock (Joint Account with DC)	No	\$15,001 - \$50,000	Dividends	\$201 - \$1,000
9	Gannett Investments Common Stock (Individual Account)	No	\$15,001 - \$50,000	Dividends	\$1,001 - \$2,500
10	Gannett Investments Common Stock (Joint Account with Spouse)	No	\$15,001 - \$50,000	Dividends, Capital Gains	\$201 - \$1,000
11	Wells Fargo Checking Account (Joint with Spouse)	N/A	\$250,001 - \$500,000	Interest	\$1,001 - \$2,500
12	Wells Fargo Savings Account (Joint with Spouse)	N/A	\$500,001 - \$1,000,000	Interest	\$1,001 - \$2,500
13	Personal Salary / Distributions (SBD Advisors)	N/A		Salary	\$250000

14	SBD Advisors	N/A	Bonus Income	\$25000
15	Time Warner Pension	N/A	Retirement Plan or Account	\$9745

3. Filer's Employment Agreements and Arrangements

#	EMPLOYER OR OTHER PARTY TO AGREEMENT/ARRANGEMENT	CITY/STATE	STATUS AND TERMS	DATE
1	Time Warner Defined Benefit Pension	New York, NY, USA	Continuing participation in Employee Benefit Plan: receive pension payments from my former employer. This information is also included under income.	1/04/2007
2	Time Warner Savings Plan (401K)	New York, NY, USA	Continuing participation in Employee Benefit Plan: either I nor my former employer continue to make contributions to this plan.	11/10/1985

4. Filer's Sources of Compensation Exceeding \$5,000 in a Year

#	SOURCE NAME	CITY, STATE	BRIEF DESCRIPTION OF DUTIES
1	Amazon Web Services	Seattle, WA	Consulting
2	Association of the US Army	Arlington, VA	Consulting
3	Bloomberg, LP	New York, NY	Consulting
4	C. Ham	Washington, DC	Consulting
5	CS	New York, NY	Consulting
6	ETO Group, LLC	Tampa, FL	Consulting
7	Foreign Policy	Washington, DC	Consulting
8	General Motors LLC	Detroit, MI	Consulting
9	GeoPoll	Washington, DC	Consulting
10	Human Rights First	Washington, DC	Consulting
11	KnuEdge, Inc.	San Diego, CA	Consulting
12	M. Flynn	Washington, DC	Consulting
13	Medecins Sans Frontiers USA, Inc	New York, NY	Consulting
14	MGM Consulting	Annapolis, MD	Consulting
15	Palantir Technologies	Palo Alto, CA	Consulting
16	RCF Management LLC	Escondido, CA	Consulting
17	Sasakawa Peace Foundation USA	Washington, DC	Consulting
18	SBD Advisors	Washington, DC	Officer
19	Skadden, Arps, Slate, Meagher & Flom LLP	Washington, DC	Consulting
20	The Palm Center	San Francisco, CA	Consulting
21	Uber	San Francisco, CA	Consulting
22	World Wildlife Fund	Washington, DC	Consulting

5. Spouse's Employment Assets & Income and Retirement Accounts

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	Spouse Individual Retirement Account (IRA)	N/A	\$250,001 - \$500,000	Dividends, Capital Gains	\$1,001 - \$2,500
1.1	Avenue Credit Strategies Investor	Yes	\$1,001 - \$15,000		None (or less than \$201)
1.2	Baron Emerging Markets Fund Retail	Yes	\$1,001 - \$15,000	Dividends, Capital Gains	\$2,501 - \$5,000
1.3	Columbia Dividend Opportunity Class A	Yes	\$1,001 - \$15,000		None (or less than \$201)

1.4	Columbia Select LRG Cap Growth Class A	Yes	\$15,001 - \$50,000		None (or less than \$201)
1.5	Delaware Value FD CL A	Yes	\$15,001 - \$50,000	Dividends, Capital Gains	\$2,501 - \$5,000
1.6	Doubleline Low DURTN EMERG MKTS FX INC	Yes	\$1,001 - \$15,000	Dividends, Capital Gains	\$2,501 - \$5,000
1.7	Dreyfus Bond Market Index INVS	Yes	\$15,001 - \$50,000	Dividends, Capital Gains	\$2,501 - \$5,000
1.8	Driehaus Micro CAP Growth Fund	Yes	\$1,001 - \$15,000	Dividends, Capital Gains	\$2,501 - \$5,000
1.9	Driehaus Event Driven Fund	Yes	\$1,001 - \$15,000	Dividends, Capital Gains	\$1,001 - \$2,500
1.10	Driehaus Active Income Fund	Yes	\$1,001 - \$15,000		None (or less than \$201)
1.11	Fidelity 500 Index Premium Class	Yes	\$15,001 - \$50,000	Dividends, Capital Gains	\$2,501 - \$5,000
1.12	Fidelity Government Cash Reserves	Yes	\$1,001 - \$15,000	Dividends, Capital Gains	\$1,001 - \$2,500
1.13	JP Morgan Strategic Income Opportunity A	Yes	\$1,001 - \$15,000		None (or less than \$201)
1.14	LM BW Absolute RTN Opportunities CL A	Yes	\$1,001 - \$15,000		None (or less than \$201)
1.15	MFS International Value Fund CL A	Yes	\$1,001 - \$15,000		None (or less than \$201)
1.16	T Rowe Price Growth Stock Advisor CL	Yes	\$15,001 - \$50,000	Dividends, Capital Gains	\$2,501 - \$5,000
1.17	Ridgeworth Ceredex Mid-Cap VAL EQ I	Yes	\$15,001 - \$50,000	Dividends, Capital Gains	\$5,001 - \$15,000
1.18	Rivernorth Core Opportunities FD CL R	Yes	\$1,001 - \$15,000		None (or less than \$201)
1.19	Riverpark Short Term Hi Yield	Yes	\$1,001 - \$15,000		None (or less than \$201)
1.20	Riverpark Strategic Income	Yes	\$1,001 - \$15,000		None (or less than \$201)
1.21	Double Line Total Return Bond Fund	Yes	\$15,001 - \$50,000		None (or less than \$201)
1.22	Victory Global Natural Resources Fund	Yes	\$1,001 - \$15,000		None (or less than \$201)
1.23	Touchstone Small Cap Value Fund	Yes	\$1,001 - \$15,000		None (or less than \$201)
1.24	Touchstone Focused Fund	Yes	\$1,001 - \$15,000	Dividends, Capital Gains	\$1,001 - \$2,500
1.25	Wasatch Frontier Emerging Small Fund	Yes	\$1,001 - \$15,000		None (or less than \$201)
1.26	Wasatch International Opportunities Fund	Yes	\$1,001 - \$15,000	Dividends, Capital Gains	\$1,001 - \$2,500
1.27	T Rowe Price International Stock	Yes	\$1,001 - \$15,000	Dividends, Capital Gains	\$1,001 - \$2,500
1.28	TCW Relative Value Dividend Fund	Yes	\$15,001 - \$50,000	Dividends, Capital Gains	\$5,001 - \$15,000
2	Carnegie Endowment for International Peace	N/A		Salary	
3	College of Charleston	N/A		Income from personal services	

4	Cowen Services Company LLC	N/A	Income from personal services
5	Dartmouth College	N/A	Income from personal services
6	Gerson Lehrman Group, 60 East 42d Street, NY	N/A	Income from personal services
7	Massachusetts Institute of Technology	N/A	Royalties
8	SAIC, 151 Lafayette Dr., Oak Ridge, TN	N/A	Income from personal services

6. Other Assets and Income

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	Time Warner Cable stock(IRA)	N/A	\$15,001 - \$50,000		None (or less than \$201)
2	AOL stock(IRA)	N/A	\$50,001 - \$100,000		None (or less than \$201)

7. Transactions

This report has no reported Transactions

8. Liabilities

#	CREDITOR NAME	TYPE OF LIABILITY	AMOUNT	YEAR INCURRED	INTEREST RATE	TERM
1	Wells Fargo Bank	Mortgage, Washington , DC, USA	\$250,001 - \$500,000	2016	3.0%	15 years

9. Gifts and Travel Reimbursements

This report has no reported Gifts and Reimbursements

Summary of Contents**1. Filer's Positions Held Outside United States Government**

Part 1 discloses positions that the filer held at any time during the reporting period (excluding positions with the United States Government). Positions are reportable even if the filer did not receive compensation. This section does not include the following: (1) positions with religious, social, fraternal, or political organizations; (2) positions solely of an honorary nature; (3) positions held as part of the filer's official duties with the United States Government; (4) mere membership in an organization; and (5) passive investment interests as a limited partner or non-managing member of a limited liability company.

2. Filer's Employment Assets & Income and Retirement Accounts

Part 2 discloses the following:

- Sources of earned and other non-investment income of the filer totaling more than \$200 during the reporting period (e.g., salary, fees, partnership share, honoraria, scholarships, and prizes)

Termination Report | U.S. Office of Government Ethics; 5 C.F.R. part 2634 | Form Approved: OMB No. (3209-0001)(March 2014)

Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278e)

Filer's Information

DONNELLY, SALLY
 Senior Advisor to Secretary of Defense, OSD, Office of the Secretary of Defense
 Date of Termination: 03/09/2018

Sally Donnelly 3 MAY 18

Other Federal Government Positions Held During the Preceding 12 Months: None

Electronic Signature - I certify that the statements I have made in this form are true, complete and correct to the best of my knowledge.

Agency Ethics Official's Opinion - On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations(Subject to any comments below).

Other review conducted by

U.S. Office of Government Ethics Certification

1. Filer's Positions Held Outside United States Government

#	NAME	CITY, STATE	OGE TYPE	POSITION	FROM	TO
1	Donnelly Seaview LLC	Columbia, SC, USA	Business Enterprise	co-owner	11/2012	Present
2	SBD Advisors	Washington, DC, USA	Business Enterprise	Officer	02/2012	01/2017

2. Filer's Employment Assets & Income and Retirement Accounts

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	Time Warner Employee Savings Plan(401K)	No			None (or less than \$201)
1.1	Time Warner Inc. Common Stock	N/A	\$15,001 - \$50,000	Dividends, Capital Gains	\$100,001 - \$1,000,000
1.2	Time Warner Large Cap Value Fund	Yes	\$1,001 - \$15,000		None (or less than \$201)
1.3	Time Warner Growth Fund	Yes	\$15,001 - \$50,000		None (or less than \$201)
1.4	Capital Preservation Fund	Yes	\$1,001 - \$15,000		None (or less than \$201)
2	SBD Advisors LLC	N/A	None (or less than \$1,001)	Sale Proceeds	\$1,170,000
3	Donnelly Seaview LLC - Bethany Beach, DE (Residential Real Estate)	N/A	\$500,001 - \$1,000,000	Rent and Royalties	\$15,001 - \$50,000

4	"TEGNA Common Stock (Sole Ownership)"	N/A	\$15,001 - \$50,000	Dividends	\$1,001 - \$2,500
5	TEGNA Common Stock (Joint Ownership)	N/A	\$15,001 - \$50,000	Dividends	\$201 - \$1,000
6	LFG SEP IRA (Self)	No			
6.1	Fidelity Cash Reserves	N/A	\$15,001 - \$50,000		None (or less than \$201)
6.2	BlackRock Global Long/Short Credit Fund	Yes	\$15,001 - \$50,000		None (or less than \$201)
6.3	Driehaus international small cap growth fund	Yes	\$15,001 - \$50,000		None (or less than \$201)
6.4	WCM Focused international growth	Yes	\$50,001 - \$100,000		None (or less than \$201)
6.5	ASG Managed Futures strategy Fund	Yes	\$15,001 - \$50,000		None (or less than \$201)
6.6	Oppenheimer Developing Markets Fund	Yes	\$15,001 - \$50,000		None (or less than \$201)
6.7	Congress large cap growth	Yes	\$50,001 - \$100,000		None (or less than \$201)
6.8	boston partners long-short research fund	Yes	\$15,001 - \$50,000		None (or less than \$201)
6.9	sterling capital equity income	Yes	\$50,001 - \$100,000		None (or less than \$201)
6.10	Dana Small Cap Equity Fund	Yes	\$15,001 - \$50,000		None (or less than \$201)
6.11	BlackRock Multi-Asset Income	Yes	\$15,001 - \$50,000		None (or less than \$201)
6.12	DoubleLine Core Fixed Income	Yes	\$100,001 - \$250,000		\$201 - \$1,000
6.13	Putnam Diversified Income Fund	Yes	\$15,001 - \$50,000		None (or less than \$201)
6.14	iShares Core S&P 500 ETF	Yes	\$15,001 - \$50,000		None (or less than \$201)
6.15	iShares Core S&P Mid Cap ETF	Yes	\$15,001 - \$50,000		None (or less than \$201)
6.16	iShares TR EAFE Value ETF	Yes	\$50,001 - \$100,000		None (or less than \$201)
6.17	iShares TR Cohen & Steers REIT ETF	Yes	\$50,001 - \$100,000		None (or less than \$201)
7	Time Warner Pension	N/A		Retirement Plan or Account	\$9745

3. Filer's Employment Agreements and Arrangements

#	EMPLOYER OR OTHER PARTY TO AGREEMENT/ARRANGEMENT	CITY/STATE	STATUS AND TERMS	DATE
1	Time Warner Defined Benefit Pension	New York, NY, USA	Continuing participation in Employee Benefit Plan: receive pension payments from my former employer. This information is also included under income.	I 04/2007
2	Time Warner Savings Plan (401K)	New York, NY, USA	Continuing participation in Employee Benefit Plan: either I nor my former employer continue to make contributions to this plan.	N 10/1985

4. Filer's Sources of Compensation Exceeding \$5,000 in a Year

This report has no reported Compensation Exceeding \$5,000

5. Spouse's Employment Assets & Income and Retirement Accounts

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	Spouse IRA	No	None (or less than \$1,001)		None (or less than \$201)
1.1	Avenue Credit Strategies Investor	Yes	\$1,001 - \$15,000		None (or less than \$201)
1.2	Baron Emerging Markets Fund Retail	Yes	\$1,001 - \$15,000	Dividends, Capital Gains	\$2,501 - \$5,000
1.3	Columbia Dividend Opportunity Class A	Yes	\$1,001 - \$15,000		None (or less than \$201)
1.4	Columbia Select LRG Cap Growth Class A	Yes	\$15,001 - \$50,000		None (or less than \$201)
1.5	Delaware Value FD CL A	Yes	\$15,001 - \$50,000	Dividends, Capital Gains	\$2,501 - \$5,000
1.6	Doubleline Low DURTN EMERG MKTS FX INC	Yes	\$1,001 - \$15,000	Dividends, Capital Gains	\$2,501 - \$5,000
1.7	Dreyfus Bond Market Index INVS	Yes	\$15,001 - \$50,000	Dividends, Capital Gains	\$2,501 - \$5,000
1.8	Driehaus Micro CAP Growth Fund	Yes	\$1,001 - \$15,000	Dividends, Capital Gains	\$2,501 - \$5,000
1.9	Driehaus Event Driven Fund	Yes	\$1,001 - \$15,000	Dividends, Capital Gains	\$1,001 - \$2,500
1.10	Driehaus Active Income Fund	Yes	\$1,001 - \$15,000		None (or less than \$201)
1.11	Fidelity 500 Index Premium Class	Yes	\$15,001 - \$50,000	Dividends, Capital Gains	\$2,501 - \$5,000
1.12	Fidelity Government Cash Reserves	Yes	\$1,001 - \$15,000	Dividends, Capital Gains	\$1,001 - \$2,500
1.13	JP Morgan Strategic Income Opportunity A	Yes	\$1,001 - \$15,000		None (or less than \$201)
1.14	LM BW Absolute RTRN Opportunities CL A	Yes	\$1,001 - \$15,000		None (or less than \$201)
1.15	MFS International Value Fund CL A	Yes	\$1,001 - \$15,000		None (or less than \$201)
1.16	T Rowe Price Growth Stock Advisor CL	Yes	\$15,001 - \$50,000	Dividends, Capital Gains	\$2,501 - \$5,000
1.17	Ridgeworth Ceredex Mid-Cap VAL EQ I	Yes	\$15,001 - \$50,000	Dividends, Capital Gains	\$5,001 - \$15,000
1.18	Rivernorth Core Opportunities FD CL R	Yes	\$1,001 - \$15,000		None (or less than \$201)
1.19	Riverpark Short Term Hi Yield	Yes	\$1,001 - \$15,000		None (or less than \$201)
1.20	Riverpark Strategic Income	Yes	\$1,001 - \$15,000		None (or less than \$201)
1.21	Double Line Total Return Bond Fund	Yes	\$15,001 - \$50,000		None (or less than \$201)
1.22	Victory Global Natural Resources Fund	Yes	\$1,001 - \$15,000		None (or less than \$201)

1.23	Touchstone Small Cap Value Fund	Yes	\$1,001 - \$15,000		None (or less than \$201)
1.24	Touchstone Focused Fund	Yes	\$1,001 - \$15,000	Dividends, Capital Gains	\$1,001 - \$2,500
1.25	Wasatch Frontier Emerging Small Fund	Yes	\$1,001 - \$15,000		None (or less than \$201)
1.26	Wasatch International Opportunities Fund	Yes	\$1,001 - \$15,000	Dividends, Capital Gains	\$1,001 - \$2,500
1.27	T Rowe Price International Stock	Yes	\$1,001 - \$15,000	Dividends, Capital Gains	\$1,001 - \$2,500
1.28	TCW Relative Value Dividend Fund	Yes	\$15,001 - \$50,000	Dividends, Capital Gains	\$5,001 - \$15,000
2	LFG SEP IRA (Spouse)	No			
2.1	Fidelity Cash Reserves	Yes	\$1,001 - \$15,000		None (or less than \$201)
2.2	BlackRock Global Long Short Credit Fund	Yes	\$15,001 - \$50,000		None (or less than \$201)
2.3	Driehaus international small cap growth fund	Yes	\$15,001 - \$50,000		None (or less than \$201)
2.4	WCM Focused international growth	Yes	\$15,001 - \$50,000		None (or less than \$201)
2.5	ASG Managed Futures strategy Fund	Yes	\$15,001 - \$50,000		None (or less than \$201)
2.6	Oppenheimer Developing Markets Fund	Yes	\$15,001 - \$50,000		None (or less than \$201)
2.7	boston partners long-short research fund	Yes	\$15,001 - \$50,000		None (or less than \$201)
2.8	Dana Small Cap Equity Fund	Yes	\$15,001 - \$50,000		None (or less than \$201)
2.9	BlackRock Multi-Asset Income	Yes	\$1,001 - \$15,000		None (or less than \$201)
2.10	DoubleLine Core Fixed Income	Yes	\$50,001 - \$100,000		\$201 - \$1,000
2.11	Putnam Diversified Income Fund	Yes	\$15,001 - \$50,000		None (or less than \$201)
2.12	iShares Core S&P 500 ETF	Yes	\$50,001 - \$100,000		None (or less than \$201)
2.13	iShares Core S&P Mid Cap ETF	Yes	\$15,001 - \$50,000		None (or less than \$201)
2.14	iShares TR EAFE Value ETF	Yes	\$15,001 - \$50,000		None (or less than \$201)
2.15	iShares TR Cohen & Steers REIT ETF	Yes	\$1,001 - \$15,000		None (or less than \$201)
3	Carnegie Endowment for International Peace	N/A		Salary	
4	College of Charleston	N/A		Income from personal services	
5	Cowen Services Company LLC	N/A		Income from personal services	
6	Dartmouth College	N/A		Income from personal services	
7	Gerson Lehrman Group, 60 East 42d Street, NY	N/A		Income from personal services	
8	Massachusetts Institute of Technology	N/A		Royalties	

9 SAIC, 151 Lafayette Dr., Oak Ridge, TN N/A Income from personal services

6. Other Assets and Income

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	T. Rowe Price brokerage accounts	No			
1.1	T. Rowe Price Capital Opportunity (PRCOX) (Joint Account with Spouse)	Yes	\$15,001 - \$50,000	Dividends, Capital Gains	\$201 - \$1,000
1.2	T. Rowe Price New Era Fund (PRNEX) (Joint Account with Spouse)	Yes	\$15,001 - \$50,000	Dividends	\$201 - \$1,000
1.3	T. Rowe Price Science & Technology Fund (PRSCX) (Joint Account with Spouse)	Yes	\$1,001 - \$15,000	Dividends, Capital Gains	\$201 - \$1,000
1.4	T. Rowe Price TRP Capital Appreciation (Joint Account with AR)	Yes	\$15,001 - \$50,000	Dividends, Capital Gains	\$201 - \$1,000
1.5	T. Rowe Price TRP New Era (Joint Account with JR)	Yes	\$50,001 - \$100,000	Dividends	\$201 - \$1,000
2	Gannett Investments Common Stock (Joint Account with DC)	N/A	\$1,001 - \$15,000	None (or less than \$201)	
3	Gannett Investments Common Stock (Individual Account)	N/A	\$15,001 - \$50,000	Dividends	\$1,001 - \$2,500
4	Gannett Investments Common Stock (Joint Account with Spouse)	N/A	\$1,001 - \$15,000	Dividends, Capital Gains	\$201 - \$1,000
5	Wells Fargo Checking Account (Joint with Spouse)	N/A	\$1,000,001 - \$5,000,000	Interest	\$2,501 - \$5,000
6	Wells Fargo Savings Account (Joint with Spouse)	N/A	\$500,001 - \$1,000,000	Interest	\$2,501 - \$5,000
7	Time Warner Cable stock (IRA)	N/A	\$15,001 - \$50,000	Capital Gains	\$5,001 - \$15,000

7. Transactions

#	DESCRIPTION	TYPE	DATE	AMOUNT
1	ASG Managed Futures strategy Fund	purchase	01/24/2018	\$15,001 - \$50,000
2	ASG MANAGED FUTURES STRATEGY FUND CL Y ASFYX	purchase	01/24/2018	\$15,001 - \$50,000
3	Avenue Credit Strategies Fund	sale	04/05/2017	\$1,001 - \$15,000
4	BARON EMERGING BEXFX	sale	04/05/2017	\$1,001 - \$15,000
5	BlackRock Global Long/Short Credit Fund	purchase	01/24/2018	\$15,001 - \$50,000
6	BLACKROCK GLOBAL LONG/SHORT CREDIT I BGCIX	purchase	01/24/2018	\$15,001 - \$50,000
7	BLACKROCK MULTI - ASSET INCOME INSTL BIICX	purchase	02/08/2018	\$1,001 - \$15,000
8	BlackRock Multi-Asset Income Fund	purchase	02/09/2018	\$15,001 - \$50,000
9	BOSTON PARTNERS LONG SHORT RESEARCH INSTL BPIRX	purchase	01/24/2018	\$15,001 - \$50,000
10	boston partners long-short research fund	purchase	01/24/2018	\$15,001 - \$50,000
11	Calvert Balanced Portfolio Fund - A	sale	01/24/2018	\$1,001 - \$15,000
12	CHARTER COMMUNICATIONS INC NEW CL A CHTR	sale	01/24/2018	\$100,001 - \$250,000
13	COLUMBIA DIVIDEND INUTX	sale	04/04/2017	\$1,001 - \$15,000
14	COLUMBIA SELECT LRG ELGAX	sale	04/04/2017	\$15,001 - \$50,000
15	Congress Large Cap Growth Fund	purchase	02/09/2018	\$50,001 - \$100,000
16	DANA SMALL CAP EQTY FD INSTITUTIONAL CL DSCIX	purchase	01/24/2018	\$15,001 - \$50,000
17	Dana Small Cap Equity Fund	purchase	01/24/2018	\$15,001 - \$50,000
18	DELAWARE VALUE FD CL DDVAX	sale	04/03/2017	\$15,001 - \$50,000
19	DESTINATIONS CORE DCFX	purchase	Multiple	\$50,001 - \$100,000
20	DESTINATIONS CORE FIXED INCOME INSTL DCFX	sale	01/24/2018	\$50,001 - \$100,000
21	DESTINATIONS EQUITY DGEFX	purchase	Multiple	\$1,001 - \$15,000
22	DESTINATIONS EQUITY INCOME FD INSTL DGEFX	sale	01/24/2018	\$1,001 - \$15,000
23	DESTINATIONS EQUITY INCOME FD INSTL DGEFX	sale	01/24/2018	\$1,001 - \$15,000
24	DESTINATIONS GLOBAL DGFFX	purchase	Multiple	\$15,001 - \$50,000

25	DESTINATIONS GLOBAL FIXD INC OPPOR INSTL DGFFX	sale	Multiple	\$15,001 - \$50,000
26	DESTINATIONS INTL DIEFX	purchase	Multiple	\$50,001 - \$100,000
27	DESTINATIONS INTL EQUITY FD INSTL DIEFX	sale	01/24/2018	\$50,001 - \$100,000
28	DESTINATIONS LARGE DLCFX	purchase	Multiple	\$100,001 - \$250,000
29	DESTINATIONS LARGE DLCFX	sale	07/13/2017	\$1,001 - \$15,000
30	DESTINATIONS LARGE CAP EQUITY INSTL DLCFX	sale	01/24/2018	\$100,001 - \$250,000
31	DESTINATIONS LARGE CAP EQUITY INSTL DLCFX	sale	01/24/2018	\$100,001 - \$250,000
32	DESTINATIONS LOW DUR DLDFX	purchase	Multiple	\$1,001 - \$15,000
33	DESTINATIONS LOW DUR FIXED INC INSTL DLDFX	sale	01/24/2018	\$1,001 - \$15,000
34	DESTINATIONS MULTI DMSFX	purchase	Multiple	\$50,001 - \$100,000
35	DESTINATIONS MULTI STRGY ALT INSTL DMSFX	sale	01/24/2018	\$15,001 - \$50,000
36	DESTINATIONS REAL DRAFX	purchase	Multiple	\$1,001 - \$15,000
37	DESTINATIONS REAL ASSETS FD INSTL DRAFX	sale	Multiple	\$1,001 - \$15,000
38	DESTINATIONS SMALL DSMFX	purchase	Multiple	\$15,001 - \$50,000
39	DESTINATIONS SMALL DSMFX	sale	07/13/2017	\$1,001 - \$15,000
40	DESTINATIONS SMALL MID CAP EQ INSTL DSMFX	sale	Multiple	\$15,001 - \$50,000
41	DODGE & COX STOCK DODGX	sale	01/24/2018	\$100,001 - \$250,000
42	DoubleLine Core Fixed Income	purchase	01/24/2018	\$100,001 - \$250,000
43	DOUBLELINE CORE FIXED INCOME CL I DBLFX	purchase	01/24/2018	\$50,001 - \$100,000
44	DOUBLELINE LOW DURTN DELNX	sale	Multiple	\$1,001 - \$15,000
45	DOUBLELINE TOTAL RT DLTNX	sale	04/03/2017	\$15,001 - \$50,000
46	DREYFUS BOND MARKET DBMIX	sale	Multiple	\$15,001 - \$50,000
47	DRIEHAUS ACTIVE LCMAX	sale	04/04/2017	\$1,001 - \$15,000
48	DRIEHAUS EVENT DEVDX	purchase	04/04/2017	\$1,001 - \$15,000
49	DRIEHAUS EVENT DEVDX	sale	Multiple	\$1,001 - \$15,000
50	DRIEHAUS INTERNAT'L SMALL CAP GROWTH FD DRIOX	purchase	01/24/2018	\$15,001 - \$50,000
51	Driehaus international small cap growth fund	purchase	01/24/2018	\$15,001 - \$50,000
52	DRIEHAUS MICRO CAP DMCRX	sale	04/04/2017	\$1,001 - \$15,000
53	FIDELITY 500 INDEX FUSVX	sale	04/03/2017	\$15,001 - \$50,000
54	FIDELITY INDEPENDENCE FDFFX	sale	01/24/2018	\$15,001 - \$50,000
55	GLOBAL X FUNDS MLP ENERGY INFRASTRUCTURE ETF MLPX	sale	02/07/2018	\$1,001 - \$15,000
56	GLOBAL X FUNDS MLP ENERGY INFRASTRUCTURE ETF MLPX	purchase	01/24/2018	\$1,001 - \$15,000
57	iShares Core S&P 500 ETF	purchase	01/24/2018	\$15,001 - \$50,000
58	ISHARES CORE S&P 500 ETF IVV	purchase	01/24/2018	\$50,001 - \$100,000
59	iShares Core S&P Mid Cap ETF	purchase	01/24/2018	\$15,001 - \$50,000
60	ISHARES CORE S&P MID-CAP ETF IJH	purchase	01/24/2018	\$15,001 - \$50,000
61	ISHARES TR COHEN STEER REIT ICF	purchase	01/24/2018	\$1,001 - \$15,000
62	iShares TR EAFE Value ETF	purchase	01/24/2018	\$50,001 - \$100,000
63	ISHARES TR EAFE VALUE EFF EVV	purchase	01/24/2018	\$15,001 - \$50,000
64	ISHARES TR US TELECOM EFF IYZ	sale	02/08/2018	\$1,001 - \$15,000
65	JP MORGAN STRATEGIC JSOAX	sale	04/04/2017	\$1,001 - \$15,000
66	LM BW ABSOLUTE RTRN LROAX	sale	Multiple	\$1,001 - \$15,000
67	MFS INTERNATIONAL MGIAK	sale	04/03/2017	\$1,001 - \$15,000
68	OPPENHEIMER DEV MARKETS CLASS I ODVIX	purchase	01/24/2018	\$15,001 - \$50,000
69	Oppenheimer Developing Markets Fund	purchase	01/24/2018	\$15,001 - \$50,000
70	POTNAM DIVERSIFIED INCOME FD CL Y PDVYX	purchase	01/24/2018	\$15,001 - \$50,000
71	Putnam Diversified Income Fund	purchase	01/24/2018	\$15,001 - \$50,000
72	RIDGEMOUTH CEREDX SMVTX	sale	04/03/2017	\$15,001 - \$50,000
73	RIVERNORTH CORE RNCX	sale	04/04/2017	\$1,001 - \$15,000
74	RIVERPARK SHORT TERM RPHYX	sale	Multiple	\$1,001 - \$15,000
75	RIVERPARK STRATEGIC RSIVX	sale	Multiple	\$1,001 - \$15,000
76	SECTOR SPDR TR SHS BEN INT CONSUMER STAPLES XLP	sale	02/08/2018	\$1,001 - \$15,000
77	SECTOR SPDR TR SHS BEN INT FINANCIAL XLP	sale	02/08/2018	\$15,001 - \$50,000

78	SECTOR SPDR TR SHS BEN INT INDUSTRIAL XLI	sale	02/08/2018	\$1,001 - \$15,000
79	SECTOR SPDR TR SHS BEN INT TECHNOLOGY XLK	sale	02/08/2018	\$15,001 - \$50,000
80	SECTOR SPDR TR SHS BEN INT UTILITIES XLU	sale	02/08/2018	\$1,001 - \$15,000
81	SELECT SECTOR SPDR TR CONSUMER DISCRETIONARY FORMERLY CYCLICAL/ TRANSN TO 06/24/2002 XLY	sale	02/08/2018	\$15,001 - \$50,000
82	SELECT SECTOR SPDR TR ENERGY XLE	sale	02/08/2018	\$1,001 - \$15,000
83	SELECT SECTOR SPDR TR HEALTH CARE FORMERLY CONSUMER S VCS TO 06/24/2002 XLV	sale	02/08/2018	\$15,001 - \$50,000
84	SELECT SECTOR SPDR TR RL EST SEL SEC XLRE	sale	02/08/2018	\$1,001 - \$15,000
85	SELECT SECTOR SPDR TR SHS BEN INT MATERIALS XLB	sale	02/08/2018	\$1,001 - \$15,000
86	Sterling Capital Equity Income Fund	purchase	02/09/2018	\$50,001 - \$100,000
87	T ROWE PRICE GROWTH TRSAX	sale	04/03/2017	\$15,001 - \$50,000
88	T ROWE PRICE INTL PAITX	sale	04/03/2017	\$1,001 - \$15,000
89	TCW RELATIVE VALUE TGIGX	sale	04/05/2017	\$15,001 - \$50,000
90	TOUCHSTONE FOCUSED TFOAX	sale	04/05/2017	\$1,001 - \$15,000
91	TOUCHSTONE SMALL TVOAX	sale	04/05/2017	\$1,001 - \$15,000
92	VICTORY GLOBAL RSNRX	sale	04/04/2017	\$1,001 - \$15,000
93	WASATCH FRONTIER WAFMX	sale	04/04/2017	\$1,001 - \$15,000
94	WASATCH INTERNATIONL	purchase	Multiple	\$1,001 - \$15,000
95	WASATCH INTERNATIONL WAIOX	sale	Multiple	\$15,001 - \$50,000
96	WCM Focused International Growth Fund	purchase	02/09/2018	\$50,001 - \$100,000
97	WCM FOCUSED INTL GROWTH FUND INSTL WCMIX	purchase	01/24/2018	\$15,001 - \$50,000

8. Liabilities

#	CREDITOR NAME	TYPE OF LIABILITY	AMOUNT	YEAR INCURRED	INTEREST RATE	TERM
1	Wells Fargo Bank	Mortgage, Washington , DC, USA	\$250,001 - \$500,000	2016	3.0%	15 years

9. Gifts and Travel Reimbursements

This report has no reported Gifts and Reimbursements

Summary of Contents

1. Filer's Positions Held Outside United States Government

Part 1 discloses positions that the filer held at any time during the reporting period (excluding positions with the United States Government). Positions are reportable even if the filer did not receive compensation. This section does not include the following: (1) positions with religious, social, fraternal, or political organizations; (2) positions solely of an honorary nature; (3) positions held as part of the filer's official duties with the United States Government; (4) mere membership in an organization; and (5) passive investment interests as a limited partner or non-managing member of a limited liability company.

2. Filer's Employment Assets & Income and Retirement Accounts

Part 2 discloses the following:

- Sources of earned and other non-investment income of the filer totaling more than \$200 during the reporting period (e.g., salary, fees, partnership share, honoraria, scholarships, and prizes)

Mr. DeMartino Ethics Documents

New Entrant Report | U.S. Office of Government Ethics; 5 C.F.R. part 2634 | Form Approved: OMB No. (3209-0001)(March 2014)

Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278e)

Filer's Information

DEMARTINO, ANTHONY G.
Deputy Chief of Staff, Office of the SECDEF, OSD
Date of Appointment: 01/27/2017

Other Federal Government Positions Held During the Preceding 12 Months: None

Electronic Signature - I certify that the statements I have made in this form are true, complete and correct to the best of my knowledge.

eSigned in FDM by:
ANTHONY G. DEMARTINO
User ID: [REDACTED]
04/18/2017

Agency Ethics Official's Opinion - On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations(Subject to any comments below).

eSigned in FDM by:
[REDACTED]
User ID: [REDACTED]
04/24/2017

Other review conducted by

U.S. Office of Government Ethics Certification

1. Filer's Positions Held Outside United States Government

#	NAME	CITY, STATE	OGE TYPE	POSITION	FROM	TO
1	SBD Advisors	Washington, DC, USA	Business Enterprise Employee		03/2015	01/2017

2. Filer's Employment Assets & Income and Retirement Accounts

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	Vanguard SEP IRA	Yes	\$15,001 - \$50,000		None (or less than \$201)
1.1	Vanguard Healthcare Investor CL	Yes	\$1,001 - \$15,000		None (or less than \$201)

1.2	Vanguard Total Stock Market Index Admiral	Yes	\$1,001 - \$15,000	None (or less than \$201)
2	SBD Advisors - Transamerica 401K	N/A	\$15,001 - \$50,000	None (or less than \$201)
2.1	TA Vanguard Instl Re 2030	Yes	\$1,001 - \$15,000	None (or less than \$201)
2.2	TA Vanguard Instl TRG RE 2040	Yes	\$1,001 - \$15,000	None (or less than \$201)
3	SBD Advisors LLC	N/A		Salary \$138661
4	SBD Advisors LLC	N/A		Income from personal services \$30000

3. Filer's Employment Agreements and Arrangements

#	EMPLOYER OR OTHER PARTY TO AGREEMENT/ARRANGEMENT	CITY/STATE	STATUS AND TERMS	DATE
1	SBD Advisors Retirement Plan	Washington, DC, USA	Continuing participation in Employee Benefit Plan: maintaining retirement benefit plan with my former employer. Neither I nor SBD Advisors continue to make contributions to this plan.	M 01/2016

4. Filer's Sources of Compensation Exceeding \$5,000 in a Year

#	SOURCE NAME	CITY, STATE	BRIEF DESCRIPTION OF DUTIES
1	Amazon Web Services	Seattle, WA	Consulting on business efficiencies
2	Bloomberg	washington, DC	Brand imagine in Washington DC
3	Doctors without Borders	New York, NY	Introduction to the US Government and understanding of CIVCAS
4	Palantir	Washington, DC	Consulting on government relationships
5	SBD Advisors	Washington, DC	Managing Director responsible for running the day to day operations of the team and providing advice to the senior leadership of the firm.
6	Uber	washington, DC	Consulting on brand and marketing

5. Spouse's Employment Assets & Income and Retirement Accounts

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	Vanguard Rollover IRA	Yes	\$50,001 - \$100,000		None (or less than \$201)
1.1	Total International Stock Ix	Yes	\$15,001 - \$50,000		None (or less than \$201)
1.2	Vanguard Total Bond Market Index Fund	Yes	\$15,001 - \$50,000		None (or less than \$201)
1.3	Vanguard Total Stock Market Index Admiral	Yes	\$15,001 - \$50,000		None (or less than \$201)
1.4	Vanguard Total International Stock IX	N/A	\$15,001 - \$50,000		None (or less than \$201)
1.5	Vanguard Total Stock Market Index ADM	Yes	\$15,001 - \$50,000		None (or less than \$201)
2	Vanguard Roth IRA	Yes	\$100,001 - \$250,000		None (or less than \$201)

2.1	Vanguard Total Bond Market Index INV	N/A	\$15,001 - \$50,000	None (or less than \$201)
3	Norfolk Public Schools - Valik 403B	No	\$15,001 - \$50,000	None (or less than \$201)
3.1	Vanguard Windsor II	Yes	\$1,001 - \$15,000	None (or less than \$201)
3.2	Vanguard Midcap Index Fund	Yes	\$1,001 - \$15,000	None (or less than \$201)
3.3	Vanguard Small Cap Special Value fund	Yes	\$1,001 - \$15,000	None (or less than \$201)
3.4	Vanguard Globabl Strategy Fund	Yes	\$1,001 - \$15,000	None (or less than \$201)
4	Doorways for Women and Families - Lincoln 403B	N/A	\$100,001 - \$250,000	None (or less than \$201)
4.1	American Funds Growth LVIP	Yes	\$15,001 - \$50,000	None (or less than \$201)
4.2	Dimensional US Core Equity One	Yes	\$15,001 - \$50,000	None (or less than \$201)
5	Doorways For Women and Families	N/A		Salary

6. Other Assets and Income

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	Vanguard PRIMECAP Roth IRA	Yes	\$250,001 - \$500,000		None (or less than \$201)
2	Vanguard Inherited IRA Total International Bond IX Admiral	Yes	\$15,001 - \$50,000		None (or less than \$201)
3	Vanguard 500 Index Fund	Yes	\$100,001 - \$250,000		\$2,501 - \$5,000
4	Vanguard Small Cap Value Index	Yes	\$50,001 - \$100,000		\$1,001 - \$2,500
5	Vanguard Total International Index	Yes	\$15,001 - \$50,000		\$1,001 - \$2,500
6	Vanguard Midcap Index	Yes	\$100,001 - \$250,000		\$1,001 - \$2,500
7	Merck Stock	N/A	\$50,001 - \$100,000	Dividends	\$1,001 - \$2,500
8	Fidelity Magellan	Yes	\$15,001 - \$50,000	Dividends	\$1,001 - \$2,500
9	TR Price International	Yes	\$15,001 - \$50,000	Dividends	\$201 - \$1,000
10	USAA Checking and Savings	N/A	\$100,001 - \$250,000	Interest	\$201 - \$1,000
11	PFCU Money Market	N/A	\$50,001 - \$100,000	Interest	\$201 - \$1,000

7. Transactions

This report has no reported **Transactions**

8. Liabilities

This report has no reported **Liabilities**

9. Gifts and Travel Reimbursements

This report has no reported **Gifts and Reimbursements**

Termination Report | U.S. Office of Government Ethics; 5 C.F.R. part 2634 | Form Approved: OMB No. (3209-0001)(March 2014)

Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278e)

Filer's Information

DEMARTINO, ANTHONY G.
 Deputy Chief of Staff, Office of the SECDEF, OSD
 Date of Termination: 07/06/2018

Other Federal Government Positions Held During the Preceding 12 Months: None

Electronic Signature - I certify that the statements I have made in this form are true, complete and correct to the best of my knowledge.

eSigned in FDM by:

ANTHONY G. DEMARTINO

User ID:

07/02/2018

Agency Ethics Official's Opinion - On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations(Subject to any comments below).

eSigned in FDM by:

User ID:

07/06/2018

Other review conducted by

U.S. Office of Government Ethics Certification

1. Filer's Positions Held Outside United States Government

#	NAME	CITY, STATE	OGE TYPE	POSITION	FROM	TO
1	SBD Advisors	Washington, DC, USA	Business Enterprise Employee		03/2015	01/2017

2. Filer's Employment Assets & Income and Retirement Accounts

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	Roth IRA - Vanguard Primecap Fund	Yes	\$250,001 - \$500,000		None (or less than \$201)
2	Vanguard SEP IRA	No			None (or less than \$201)

2.1	Vanguard Healthcare Investor CL	Yes	\$1,001 - \$15,000		None (or less than \$201)
2.2	Vanguard Total Stock Market Index Admiral	Yes	\$1,001 - \$15,000		None (or less than \$201)
3	Vanguard Inherited IRA Total International Bond IX Admiral	Yes	\$15,001 - \$50,000		None (or less than \$201)
4	SBD Advisors - Transamerica 401K	No			None (or less than \$201)
4.1	TA Vanguard Instl Re 2030	Yes	\$1,001 - \$15,000		None (or less than \$201)
4.2	TA Vanguard Instl TRG RE 2040	Yes	\$1,001 - \$15,000		None (or less than \$201)
5	SBD Advisors LLC	N/A		Salary	\$10086
6	SBD Advisors LLC	N/A		2016 Bonus	\$10000

3. Filer's Employment Agreements and Arrangements

#	EMPLOYER OR OTHER PARTY TO AGREEMENT/ARRANGEMENT	CITY/STATE	STATUS AND TERMS	DATE
1	SBD Advisors Retirement Plan	Washington, DC, USA	Continuing participation in Employee Benefit Plan: maintaining retirement benefit plan with my former employer. Neither I nor SBD Advisors continue to make contributions to this plan.	M 01/2016

4. Filer's Sources of Compensation Exceeding \$5,000 in a Year

This report has no reported Compensation Exceeding \$5,000

5. Spouse's Employment Assets & Income and Retirement Accounts

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	Vanguard Rollover IRA	No			None (or less than \$201)
1.1	Vanguard Total International Stock IX	Yes	\$15,001 - \$50,000		None (or less than \$201)
1.2	Vanguard Total Bond Market Index Fund	Yes	\$15,001 - \$50,000		None (or less than \$201)
1.3	Vanguard Total Stock Market Index Admiral	Yes	\$15,001 - \$50,000		None (or less than \$201)
1.4	Vanguard Total International Stock IX	N/A	\$15,001 - \$50,000		None (or less than \$201)
1.5	Vanguard Total Stock Market Index ADM	Yes	\$15,001 - \$50,000		None (or less than \$201)
2	Vanguard Roth IRA	No			None (or less than \$201)
2.1	Vanguard Total Bond Market Index INV	N/A	\$15,001 - \$50,000		None (or less than \$201)
3	Norfolk Public Schools - Valik 403B	No			None (or less than \$201)
3.1	Vanguard Windsor II	Yes	\$1,001 - \$15,000		None (or less than \$201)

3.2	Vanguard Midcap Index Fund	Yes	\$1,001 - \$15,000	None (or less than \$201)
3.3	Vanguard Small Cap Special Value fund	Yes	\$1,001 - \$15,000	None (or less than \$201)
3.4	Vanguard Globabl Strategy Fund	Yes	\$1,001 - \$15,000	None (or less than \$201)
4	Doorways for Women and Families - Lincoln 403B	No		None (or less than \$201)
4.1	American Funds Growth LVIP	Yes	\$15,001 - \$50,000	None (or less than \$201)
4.2	Dimensional US Core Equity One	Yes	\$15,001 - \$50,000	None (or less than \$201)
5	Doorways For Women and Families	N/A	Salary	

6. Other Assets and Income

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	Vanguard 500 Index Fund	Yes	\$100,001 - \$250,000		\$2,501 - \$5,000
2	Vanguard Small Cap Value Index	Yes	\$50,001 - \$100,000		\$1,001 - \$2,500
3	Vanguard Total International Index	Yes	\$15,001 - \$50,000		\$1,001 - \$2,500
4	Vanguard Midcap Index	Yes	\$100,001 - \$250,000		\$1,001 - \$2,500
5	Merck Stock	N/A	\$50,001 - \$100,000	Dividends	\$1,001 - \$2,500
6	Fidelity Magellan	Yes	\$15,001 - \$50,000	Dividends	\$1,001 - \$2,500
7	T Rowe Price International Fund	Yes	\$15,001 - \$50,000	Dividends	\$201 - \$1,000
8	U.S. bank account #1 (cash) Checking and Savings	N/A	\$100,001 - \$250,000	Interest	\$201 - \$1,000
9	U.S. bank money market account (cash)	N/A	\$100,001 - \$250,000	Interest	\$201 - \$1,000

7. Transactions

This report has no reported **Transactions**

8. Liabilities

This report has no reported **Liabilities**

9. Gifts and Travel Reimbursements

This report has no reported **Gifts and Reimbursements**

Summary of Contents

1. Filer's Positions Held Outside United States Government

Part 1 discloses positions that the filer held at any time during the reporting period (excluding positions with the United States Government). Positions are reportable even if the filer did not receive compensation. This section does not include the following: (1) positions with religious, social, fraternal, or political organizations; (2) positions solely of an honorary nature; (3) positions held as part of the filer's official duties with the United States Government; (4) mere membership in an organization; and (5) passive investment interests as a limited partner or non-managing member of a limited liability company.

Ms. Cummings Ethics Documents

Incumbent Report 2019 | U.S. Office of Government Ethics; 5 C.F.R. part 2634 | Form Approved: OMB No. (3209-0001)(March 2014)

Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278e)

Filer's Information

CUMMINGS, STACY A.
PDASD, AE, Office of ASD(A), OSD
Report Year: 2019

Other Federal Government Positions Held During the Preceding 12 Months:
PEO DHMS, PEO DHMS, 3/2016 - 3/2019

Electronic Signature - I certify that the statements I have made in this form are true, complete and correct to the best of my knowledge.

eSigned in FDM by:
STACY A. CUMMINGS
User ID: [REDACTED]
04/30/2019

Agency Ethics Official's Opinion - On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (Subject to any comments below).

eSigned in FDM by:
[REDACTED]
User ID: [REDACTED]
06/21/2019

Other review conducted by

Supervisor:
eSigned in FDM by:
Kevin M. Fahey
User ID: [REDACTED]
05/06/2019

U.S. Office of Government Ethics Certification

1. Filer's Positions Held Outside United States Government

This report has no reported **Positions Held Outside United States Government**

2. Filer's Employment Assets & Income and Retirement Accounts

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	JANUS HENDERSON MID CAP (ROTH IRA)	Yes	\$1,001 - \$15,000		None (or less than \$201)
2	PERKINS MID CAP VALUE (ROTH IRA)	Yes	None (or less than \$1,001)		None (or less than \$201)
3	SCHWAB INTL INDEX FUND (ROTH IRA)	Yes	\$1,001 - \$15,000		None (or less than \$201)
4	SCHWAB S&P 500 INDEX FUND (ROTH IRA)	Yes	\$1,001 - \$15,000	Dividends, Capital Gains	\$1,001 - \$2,500
5	SCHWAB SMALL CAP INDEX FUND (ROTH IRA)	Yes	\$1,001 - \$15,000	Dividends, Capital Gains	\$201 - \$1,000
6	USAA Nasdaq-100 Index Fund Symbol	Yes	\$1,001 - \$15,000		None (or less than \$201)

3. Filer's Employment Agreements and Arrangements

This report has no reported Agreements and Arrangements

4. Filer's Sources of Compensation Exceeding \$5,000 in a Year

This report has no reported Compensation Exceeding \$5,000

5. Spouse's Employment Assets & Income and Retirement Accounts

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	SCHWAB TOTAL STOCK MKT INDEX	Yes	\$15,001 - \$50,000	Capital Gains	\$1,001 - \$2,500
2	SCHWAB US AGGREGATE BOND INDEX FD	Yes	\$1,001 - \$15,000	Capital Gains	\$1,001 - \$2,500
3	SCHWAB INTL INDEX FUND	Yes	\$15,001 - \$50,000	Capital Gains	\$1,001 - \$2,500

6. Other Assets and Income

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	Navy Federal Credit Union	N/A	\$50,001 - \$100,000		None (or less than \$201)
2	USAA Growth & Income Fund	Yes	\$1,001 - \$15,000	Capital Gains	\$201 - \$1,000
3	USAA Growth Fund	Yes	\$1,001 - \$15,000		None (or less than \$201)
4	APPLE INC	N/A	\$15,001 - \$50,000	Dividends, Capital Gains	\$15,001 - \$50,000
5	CHEVRON CORPORATION	N/A	\$15,001 - \$50,000	Dividends, Capital Gains	\$1,001 - \$2,500
6	JOHNSON & JOHNSON	N/A	\$15,001 - \$50,000	Dividends, Capital Gains	\$1,001 - \$2,500
7	MICROSOFT CORP	N/A	\$15,001 - \$50,000	Dividends, Capital Gains	\$5,001 - \$15,000
8	PROCTER & GAMBLE	N/A	\$15,001 - \$50,000	Dividends, Capital Gains	\$1,001 - \$2,500

9	STARBUCKS CORP	N/A	\$15,001 - \$50,000	Dividends, Capital Gains	\$5,001 - \$15,000
10	WALT DISNEY CO	N/A	\$15,001 - \$50,000	Dividends, Capital Gains	\$5,001 - \$15,000
11	WELLS FARGO & CO	N/A	\$15,001 - \$50,000	Dividends, Capital Gains	\$201 - \$1,000
12	JANUS HENDERSON FUND	Yes	\$50,001 - \$100,000	Dividends, Capital Gains	\$15,001 - \$50,000
13	SCHWAB INTL INDEX FUND	Yes	\$50,001 - \$100,000	Dividends	\$2,501 - \$5,000
14	SCHWAB S&P 500 INDEX FD	Yes	\$100,001 - \$250,000	Dividends, Capital Gains	\$15,001 - \$50,000
15	SCHWAB SMALL CAP INDEX FUND	Yes	\$50,001 - \$100,000	Dividends, Capital Gains	\$2,501 - \$5,000
16	ISHARES US AEROSPACE ETF	Yes	\$15,001 - \$50,000	Dividends, Capital Gains	\$2,501 - \$5,000
17	CHARLES SCHWAB SAVINGS/CHECKING	N/A	\$50,001 - \$100,000		None (or less than \$201)
18	3M COMPANY	N/A	\$15,001 - \$50,000	Dividends, Capital Gains	\$5,001 - \$15,000
19	CHARLES SCHWAB US REIT	Yes	None (or less than \$1,001)	Dividends, Capital Gains	\$1,001 - \$2,500
20	SCHWAB US DIVIDEND (ROTH IRA)	Yes	\$1,001 - \$15,000	Dividends, Capital Gains	\$201 - \$1,000
21	USAA Extended Market Index Fund	Yes	\$1,001 - \$15,000		None (or less than \$201)
22	TESLA INC	N/A	None (or less than \$1,001)	Dividends, Capital Gains	\$201 - \$1,000
23	SCHWAB FUNDAMENTAL INTL	Yes	\$15,001 - \$50,000		None (or less than \$201)
24	SCHWAB EMERGING MARKETS	Yes	\$15,001 - \$50,000	Dividends, Capital Gains	\$201 - \$1,000
25	USAA TAX EXEMPT LONG	Yes	\$50,001 - \$100,000		None (or less than \$201)
26	USAA VIRGINIA BOND FUND	No	\$50,001 - \$100,000	Dividends, Capital Gains	\$201 - \$1,000
27	SCHWAB BANK	N/A	\$15,001 - \$50,000		None (or less than \$201)
28	THE COCA-COLA CO	N/A	\$15,001 - \$50,000	Dividends, Capital Gains	\$5,001 - \$15,000
29	USAA TAX EXEMPT LONG	Yes	\$50,001 - \$100,000		None (or less than \$201)

7. Transactions

#	DESCRIPTION	TYPE	DATE	AMOUNT
1	CHARLES SCHWAB US MID-CAP ETF (ROTH IRA)	sale	08/14/2018	\$1,001 - \$15,000
2	CHARLES SCHWAB US REIT ETF:	sale	01/08/2018	\$15,001 - \$50,000
3	CHEVRON CORPORATION	sale	01/08/2018	\$1,001 - \$15,000
4	GENERAL ELECTRIC CO	sale	01/08/2018	\$1,001 - \$15,000
5	JANUS HENDERSON ENTERPRISE FD T	purchase	Multiple	\$1,001 - \$15,000
6	SCHWAB EMERGING MARKETS EQUITY ETF	purchase	Multiple	\$15,001 - \$50,000
7	SCHWAB FUNDAMENTAL INTL SMALL CO INDEX	purchase	Multiple	\$15,001 - \$50,000
8	SCHWAB INTL INDEX FUND	purchase	Multiple	\$1,001 - \$15,000

9	SCHWAB INTL INDEX FUND	purchase	Multiple	\$50,001 - \$100,000
10	SCHWAB S&P 500 INDEX FD	purchase	Multiple	\$1,001 - \$15,000
11	SCHWAB SMALL CAP INDEX FUND	purchase	Multiple	\$1,001 - \$15,000
12	SCHWAB TOTAL STOCK MKT INDEX	purchase	08/22/2018	\$15,001 - \$50,000
13	SCHWAB US AGGREGATE BOND INDEX FD	purchase	08/22/2018	\$1,001 - \$15,000
14	SCHWAB US LARGE CAP ETF (ROTH IRA)	sale	08/14/2018	\$15,001 - \$50,000
15	SCHWAB US SMALL CAP ETF (ROTH IRA)	sale	08/14/2018	\$1,001 - \$15,000
16	TESLA INC	sale	10/02/2018	\$15,001 - \$50,000
17	USAA TAX EXEMPT LONG	purchase	Multiple	\$50,001 - \$100,000
18	USAA TAX EXEMPT INTERM TERM FUND	purchase	Multiple	\$50,001 - \$100,000
19	WELLS FARGO BK	sale	01/08/2018	\$1,001 - \$15,000

8. Liabilities

This report has no reported **Liabilities**

9. Gifts and Travel Reimbursements

This report has no reported **Gifts and Reimbursements**

Summary of Contents

1. Filer's Positions Held Outside United States Government

Part 1 discloses positions that the filer held at any time during the reporting period (excluding positions with the United States Government). Positions are reportable even if the filer did not receive compensation. This section does not include the following: (1) positions with religious, social, fraternal, or political organizations; (2) positions solely of an honorary nature; (3) positions held as part of the filer's official duties with the United States Government; (4) mere membership in an organization; and (5) passive investment interests as a limited partner or non-managing member of a limited liability company.

2. Filer's Employment Assets & Income and Retirement Accounts

Part 2 discloses the following:

- Sources of earned and other non-investment income of the filer totaling more than \$200 during the reporting period (e.g., salary, fees, partnership share, honoraria, scholarships, and prizes)
- Assets related to the filer's business, employment, or other income-generating activities that (1) ended the reporting period with a value greater than \$1,000 or (2) produced more than \$200 in income during the reporting period (e.g., equity in business or partnership, stock options, retirement plans/accounts and their underlying holdings as appropriate, deferred compensation, and intellectual property, such as book deals and patents)

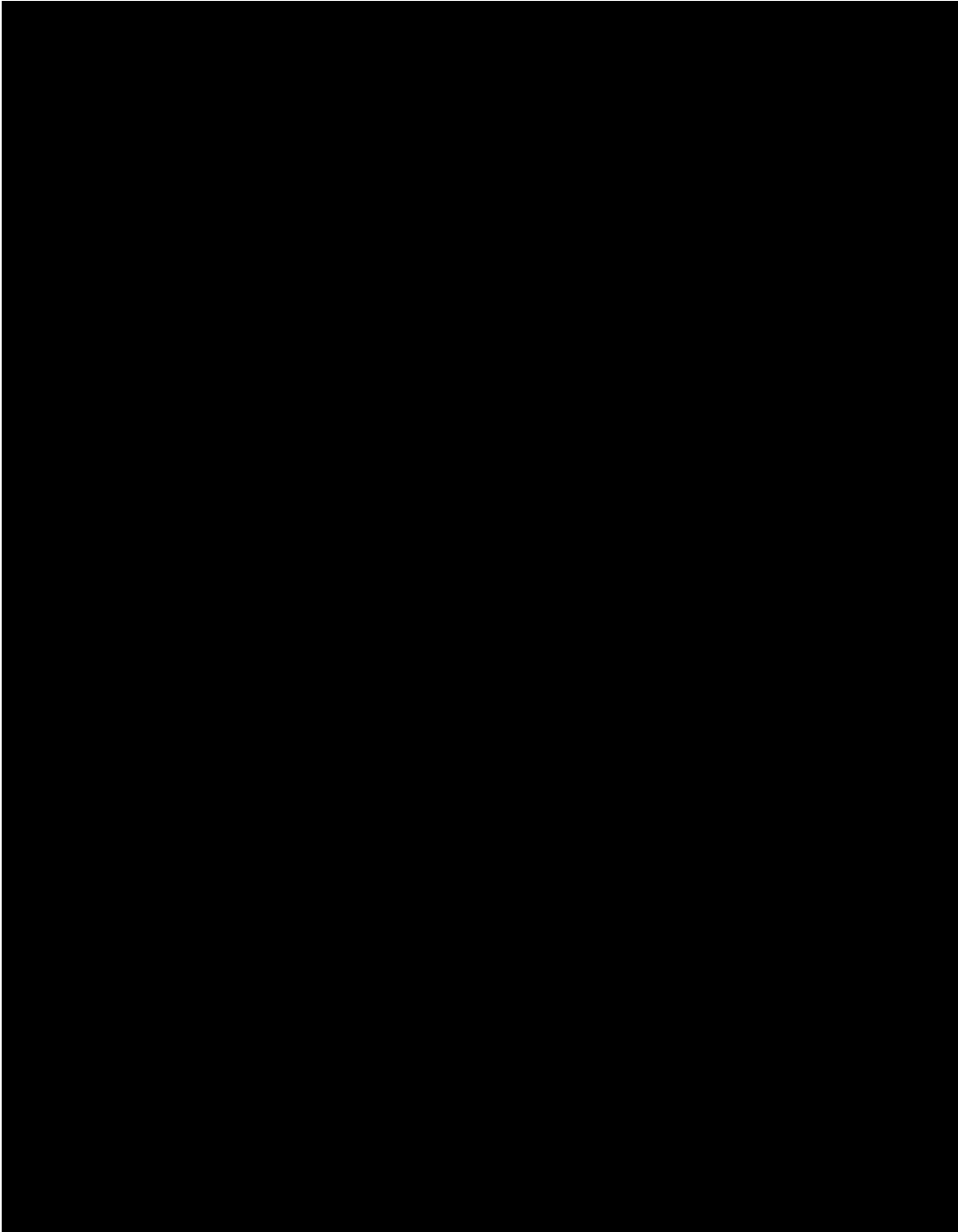
This section does not include assets or income from United States Government employment or assets that were acquired separately from the filer's business, employment, or other income-generating activities (e.g., assets purchased through a brokerage account). Note: The type of income is not required if the amount of income is \$0 - \$200 or if the asset qualifies as an excepted investment fund (EIF).

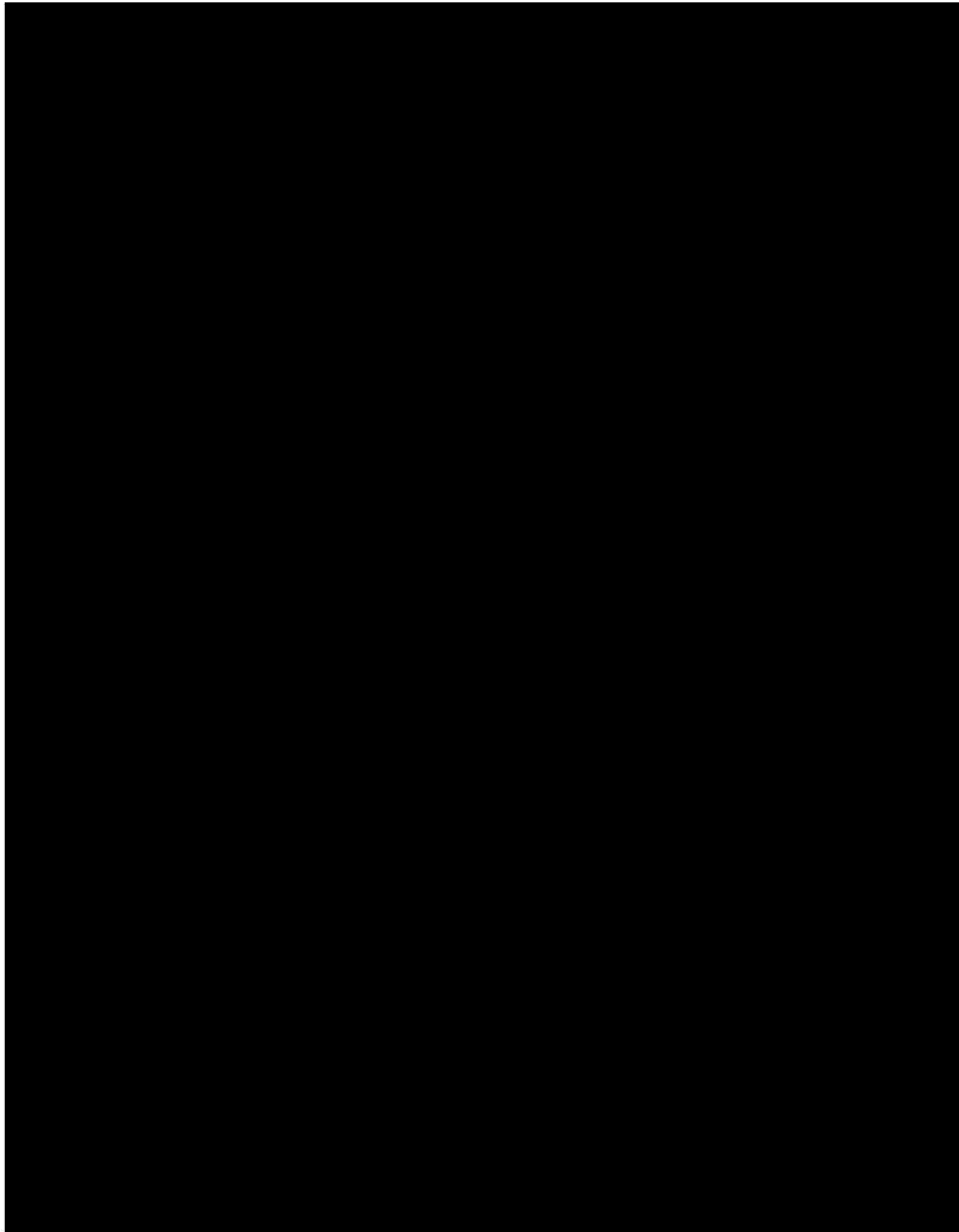
3. Filer's Employment Agreements and Arrangements

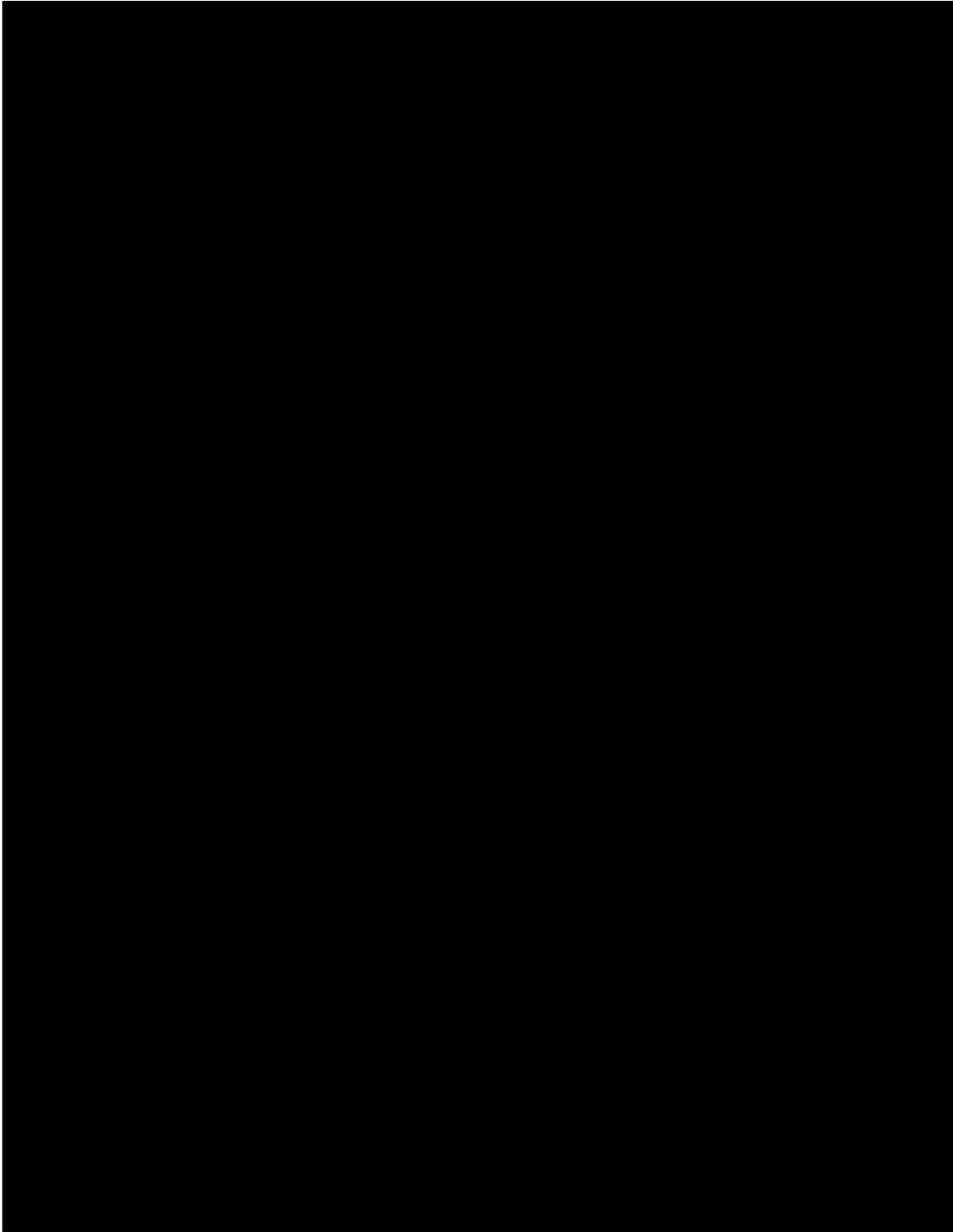
Part 3 discloses agreements or arrangements that the filer had during the reporting period with an employer or former employer (except the United States Government), such as the following:

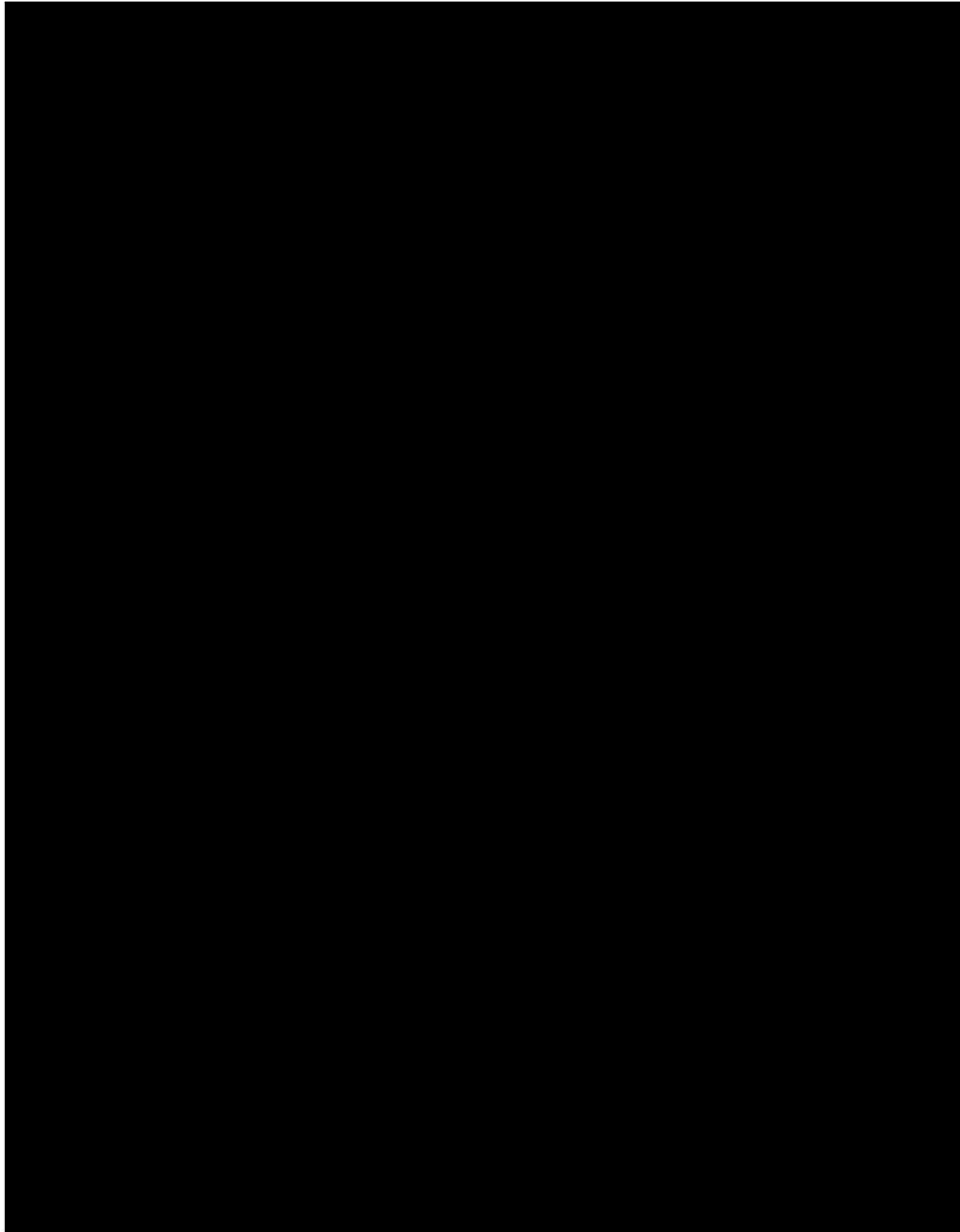
- Future employment
- Leave of absence

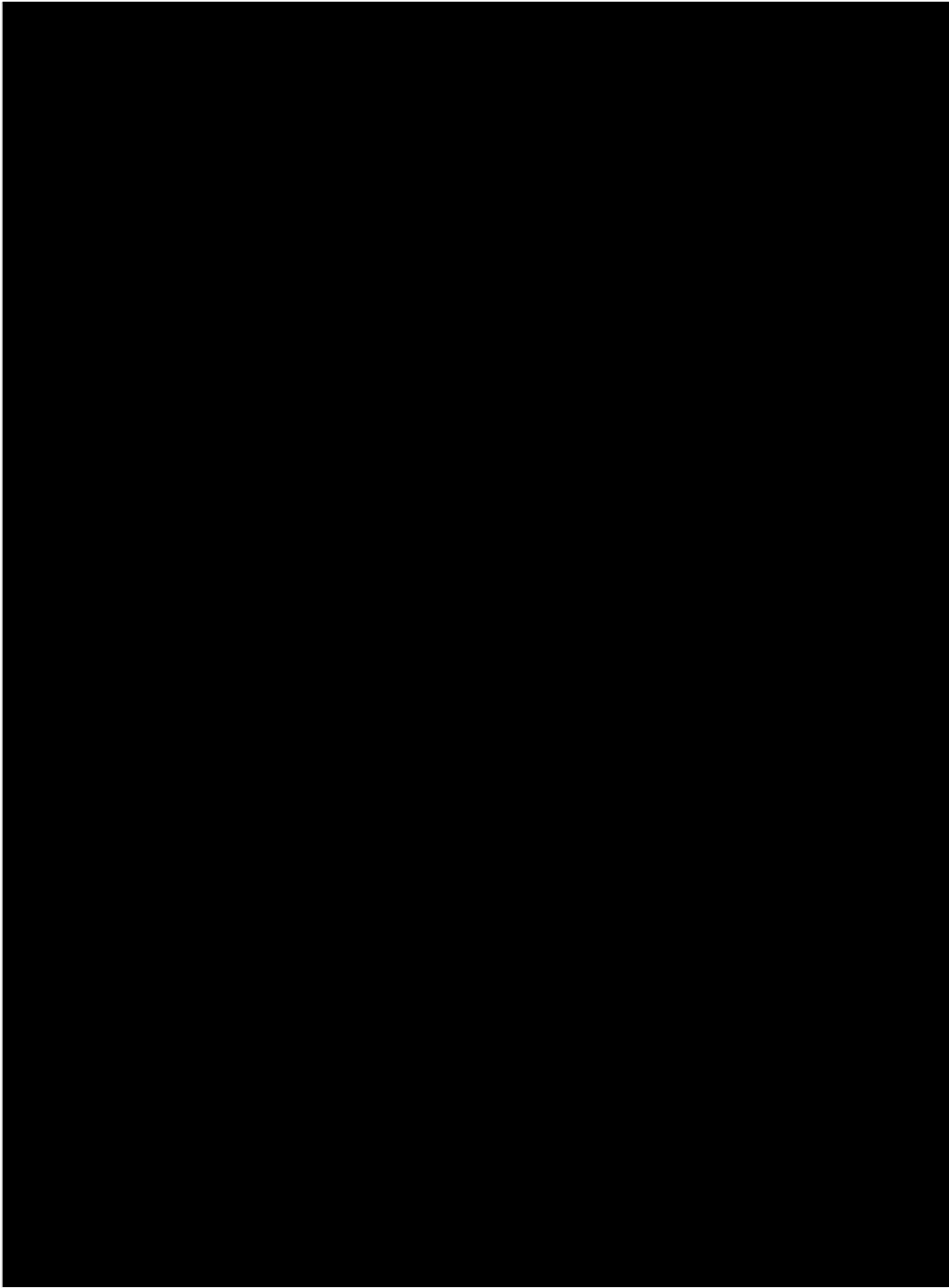
APPENDIX E – RATIONALE FOR USING A SINGLE-AWARD INDEFINITE DELIVERY/INDEFINITE QUANTITY (ID/IQ) CONTRACT

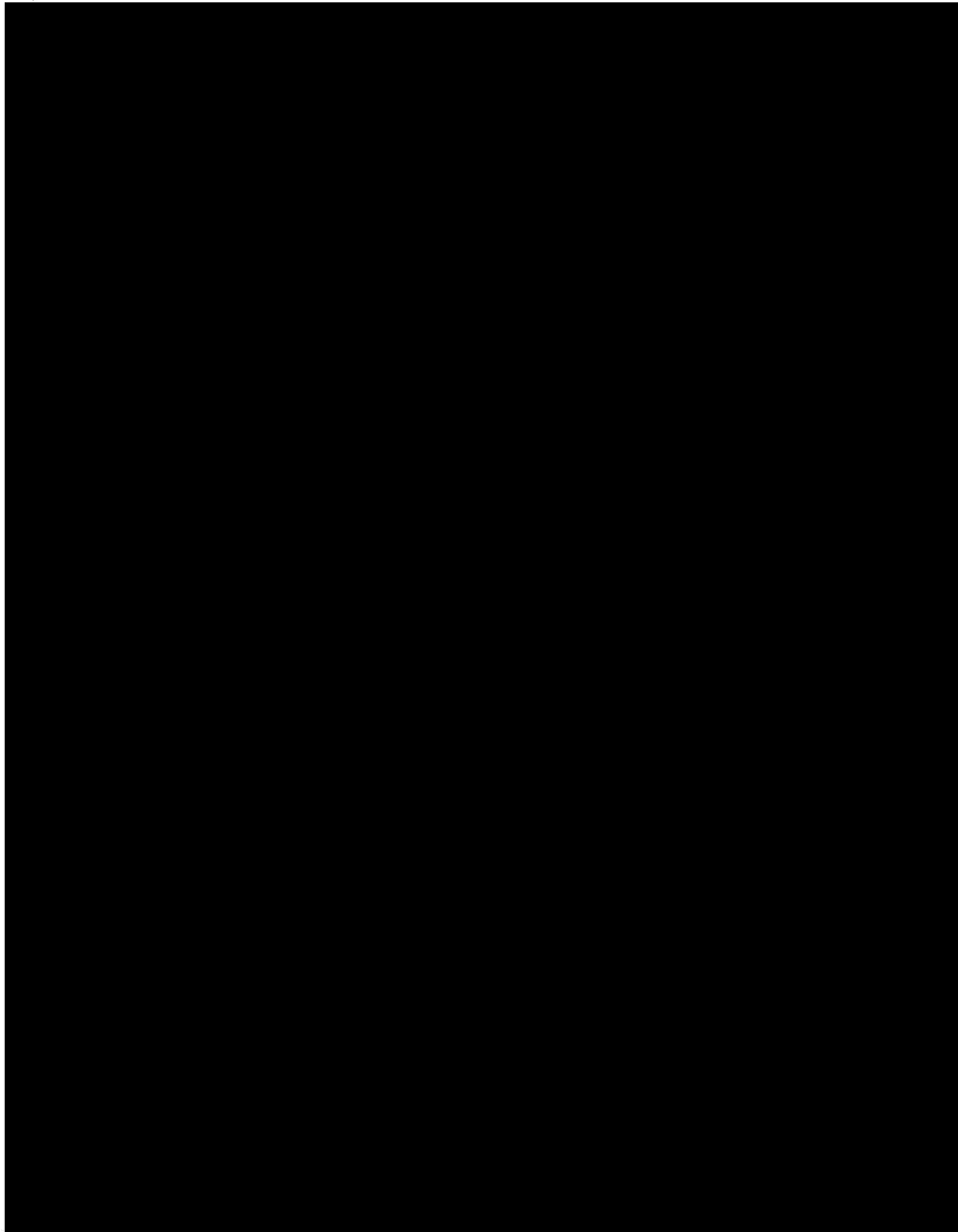


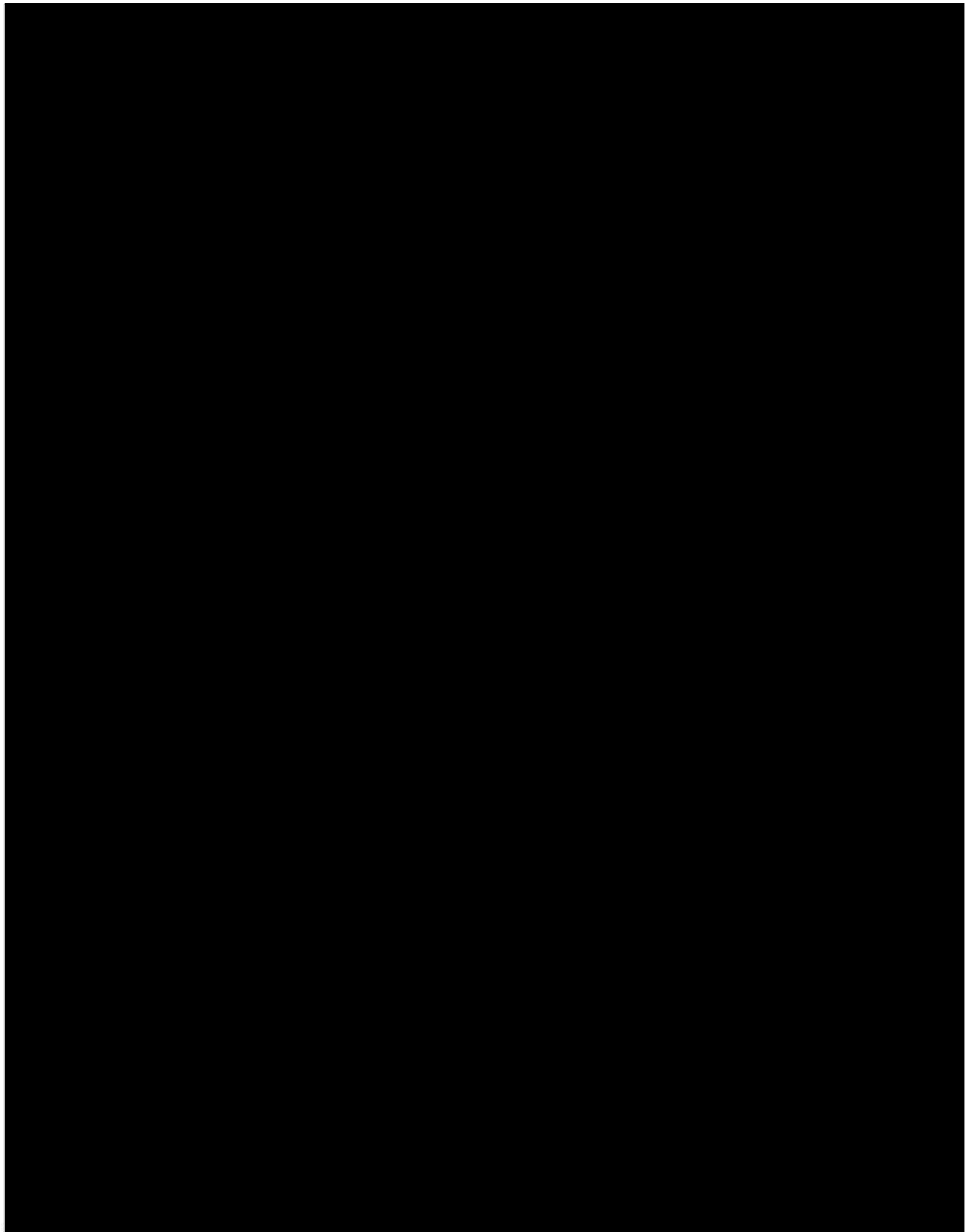


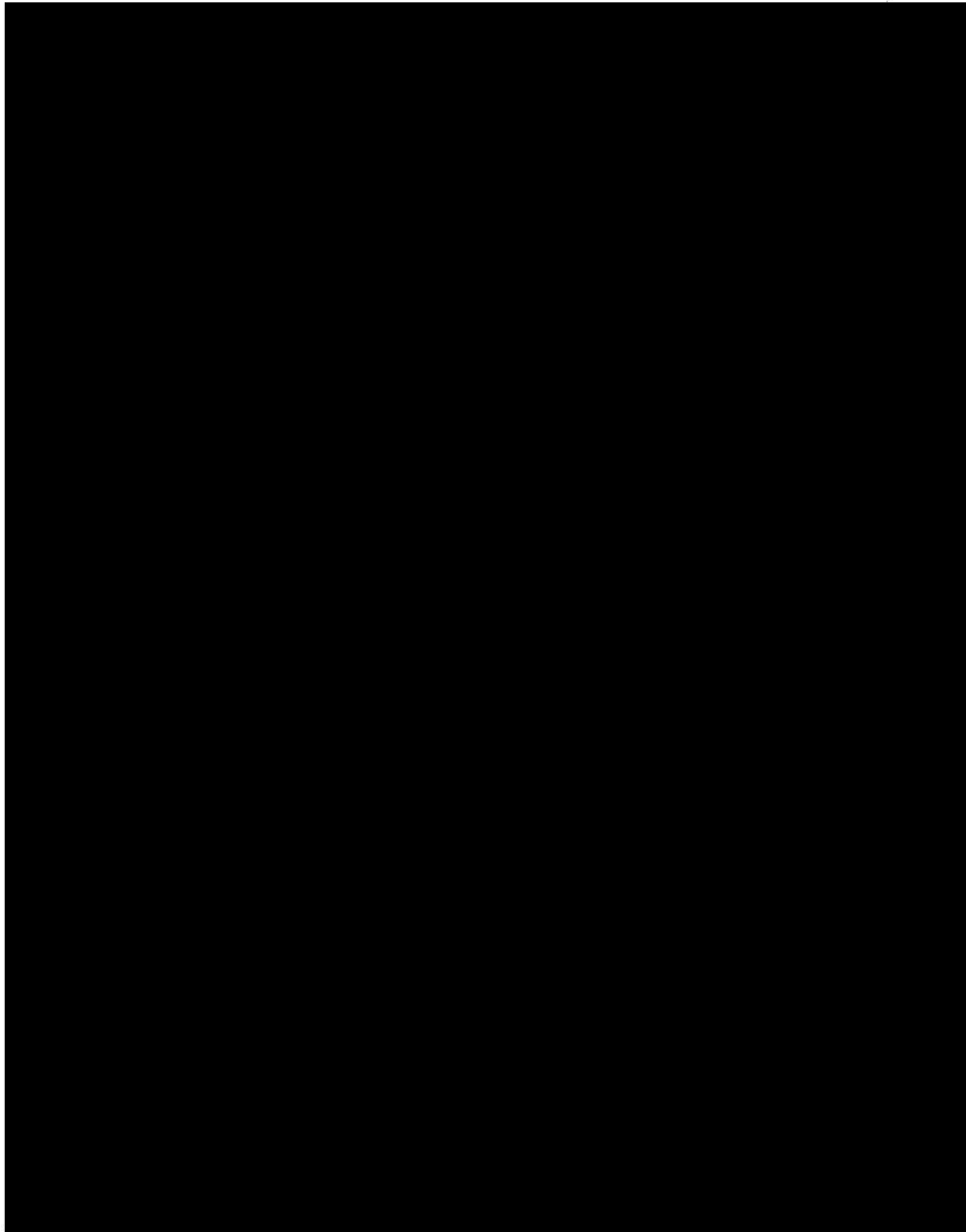


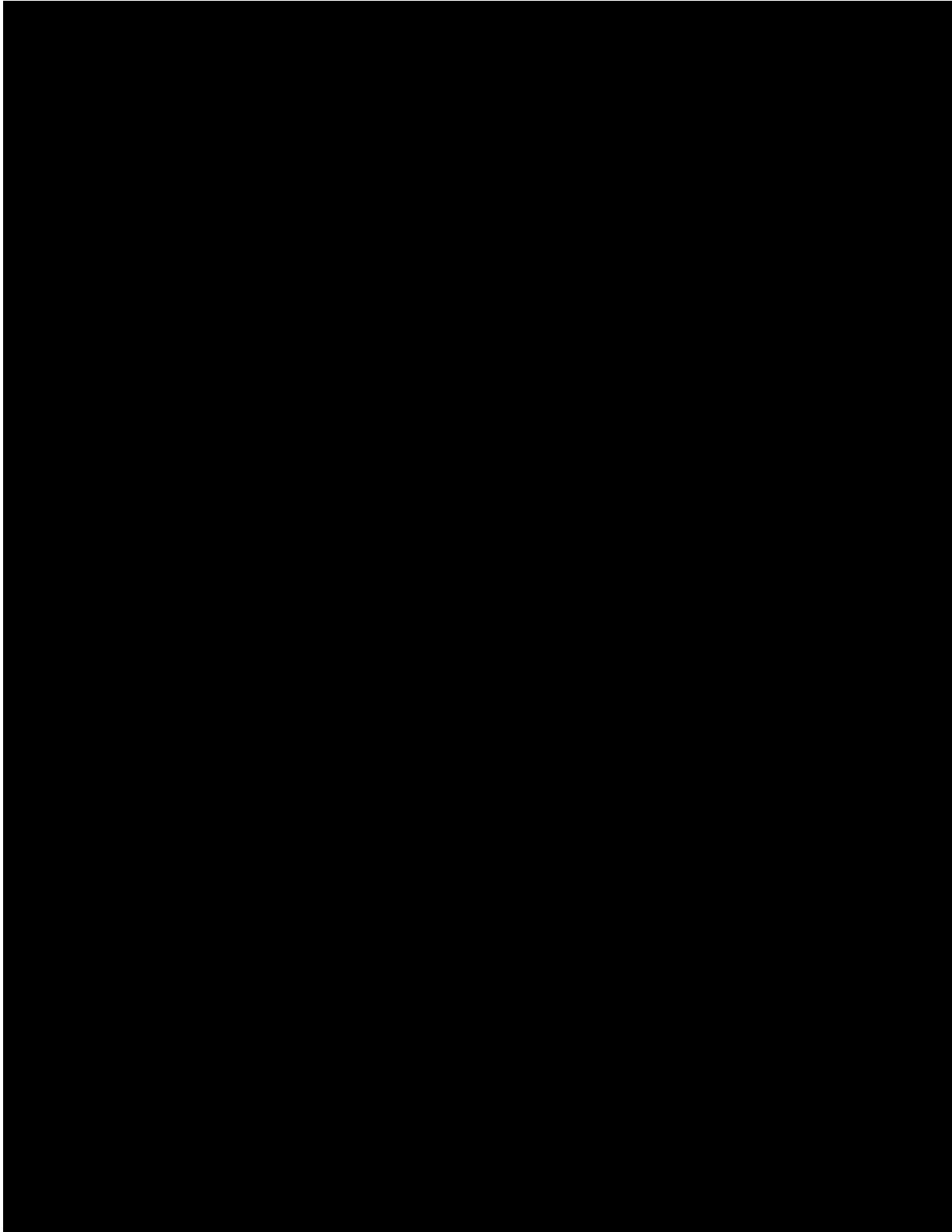


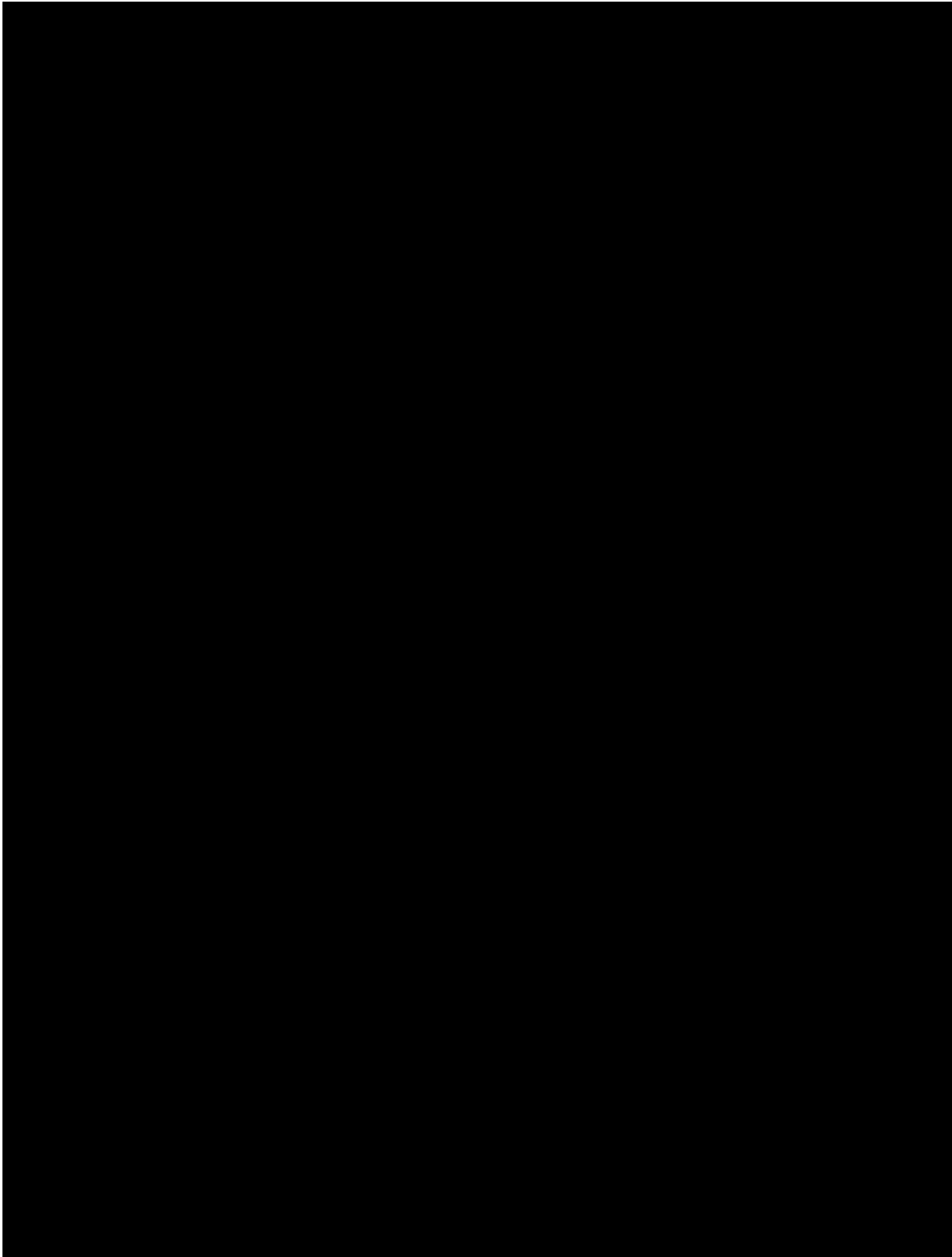


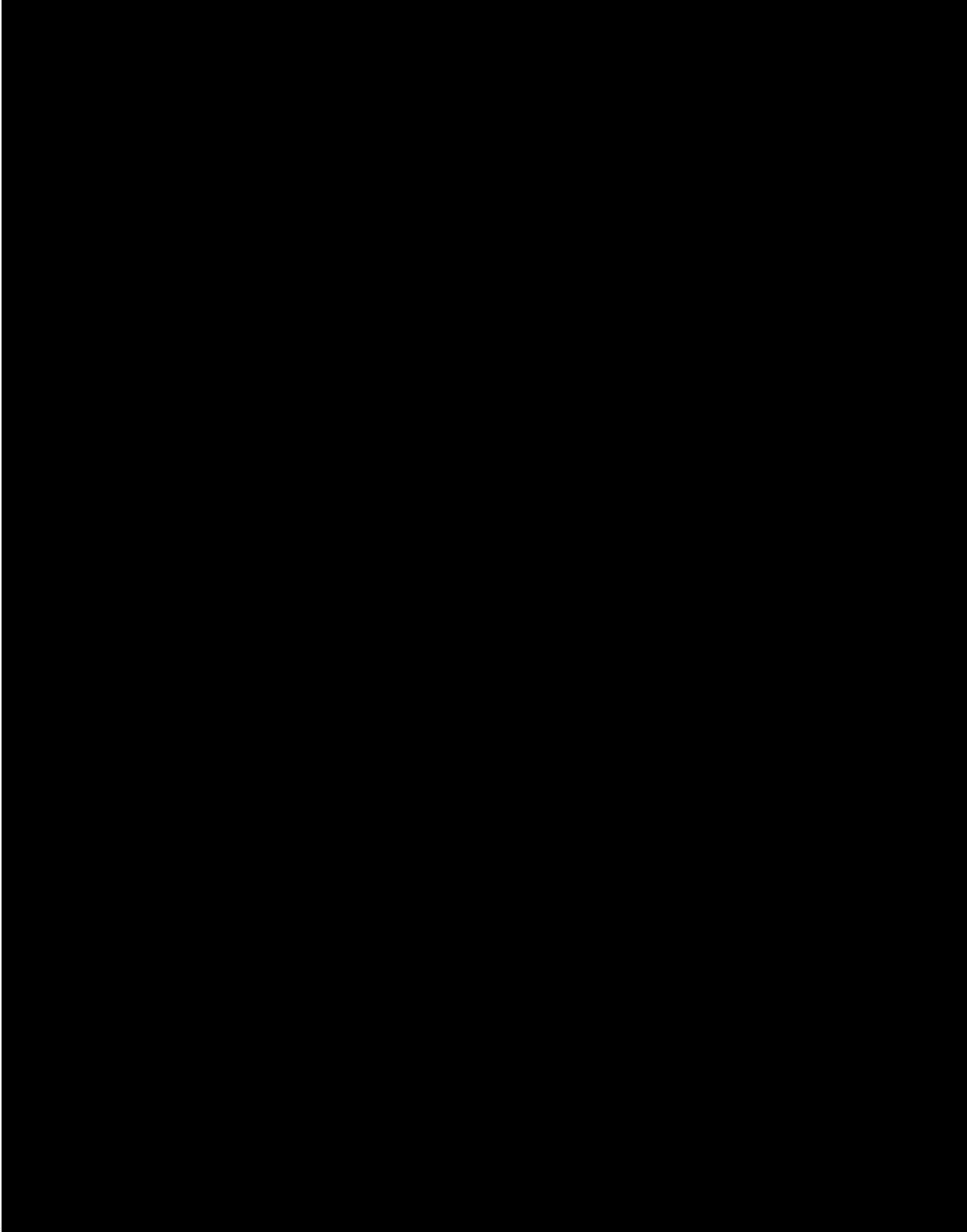


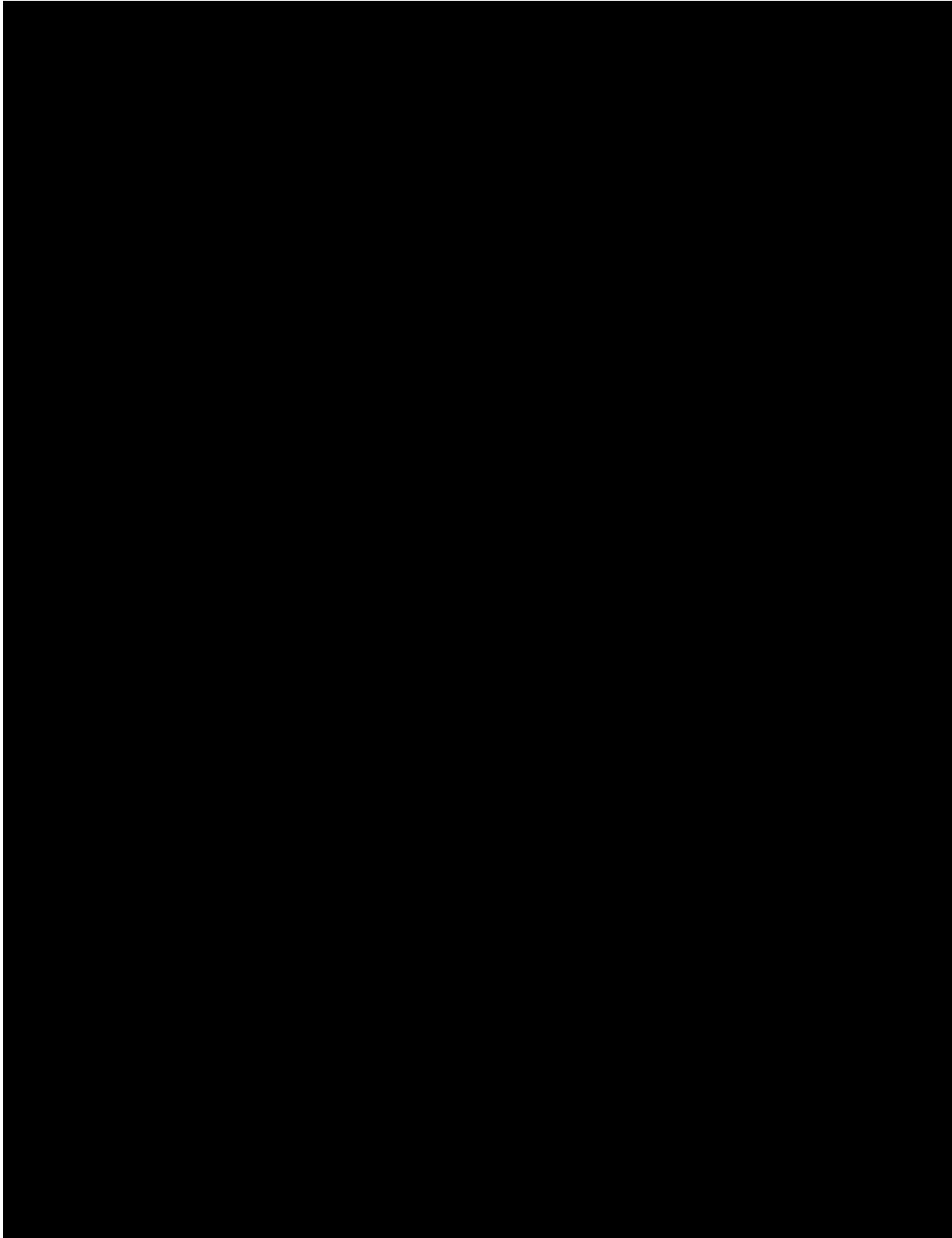


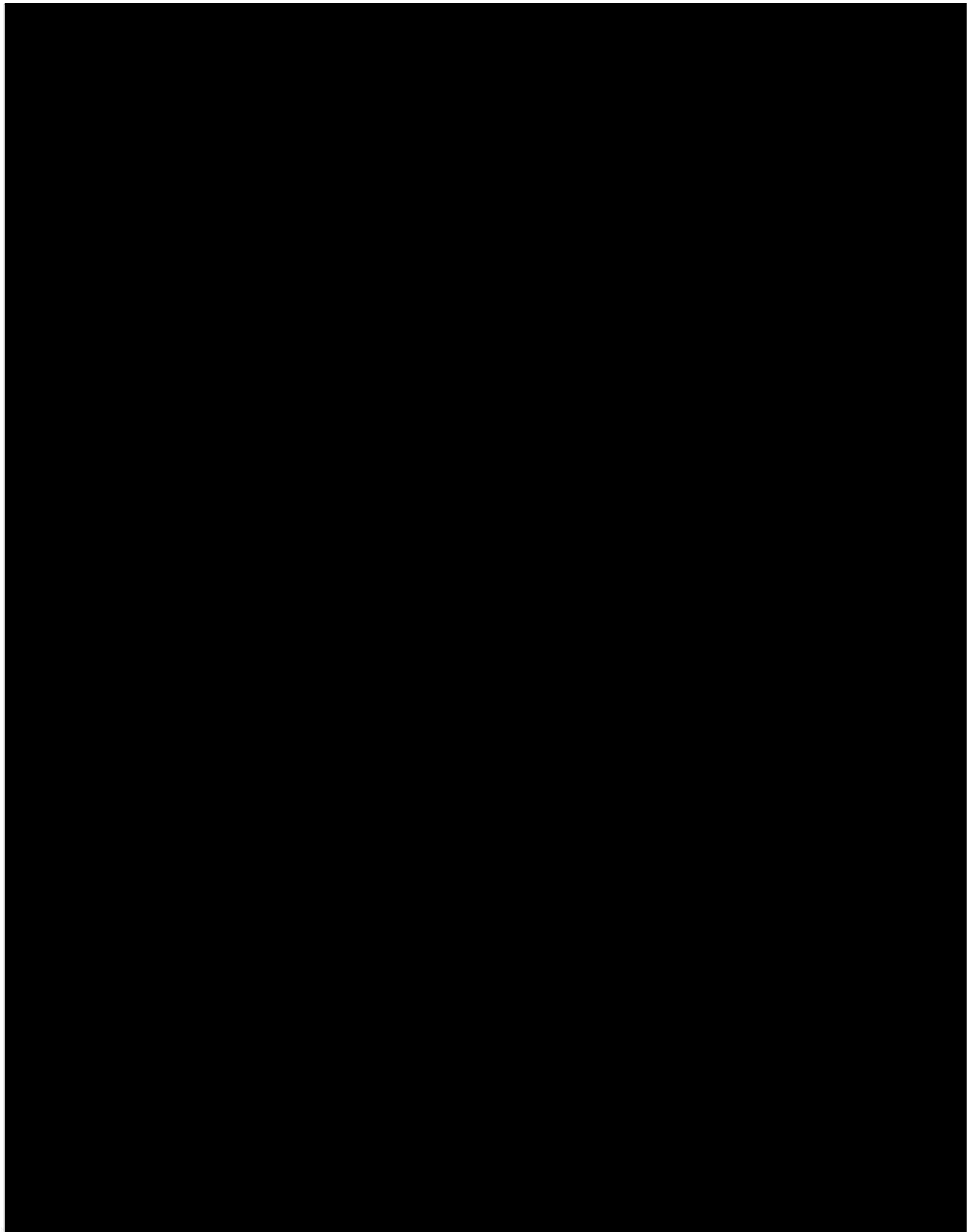












APPENDIX F – REQUEST FOR PROPOSALS GATE CRITERIA

Section L4: Volume II – Gate Criteria Submission Instructions

JEDI Cloud RFP # HQ0034-18-R-0077_0002

2452 License Agreements (whether called an End User License Agreement, Terms of Use, or some other
2453 name) and Service Level Agreements (SLAs), including third party agreements; unless those third
2454 party agreements are for third party offerings provided through the online marketplace where Clause
2455 H10 applies, applicable to the services that are proposed for delivery in its proposal. The Government
2456 intends to review all License Agreements and SLAs for consistency with Federal law and the
2457 Government's needs, which are reflected in the requirements in the SOO and the JEDI Cloud Cyber
2458 Security Plan and Section H1, Government Data.

2459
2460 The Government will accept commercial terms in a License Agreement or SLA only to the extent that
2461 those terms do not conflict with Federal law and only to the extent those terms meet the
2462 Government's needs. The Offeror shall submit the executed Addendum in RFP Section H8,
2463 Mandatory Addendum License Agreement or Service Level Agreement, as an attachment to any
2464 License Agreement(s) or SLA(s) submitted with its proposal in response to the RFP. Problematic
2465 terms beyond those in the Addendum will have to be specifically negotiated prior to award.

2466
2467 The Offeror acknowledges that the executed Addendum in RFP Section H8 will become a binding
2468 part of the contract and all TOs issued thereunder.

2469
2470 **TAB J: PWS/SOO & Factor Matrix:** The Offeror shall submit a cross-reference matrix using
2471 Attachment L-8, PWS/SOO & Factor Crosswalk Matrix. The PWS references shall be sufficiently
2472 specific to allow for easy identification of the task (using page, subsection, and sub-paragraph
2473 numbers as necessary). The Matrix shall address all Performance Requirements in Section 3 of the
2474 SOO, including all subsections, and any proposed Desired Capabilities in Section 4 of the SOO.
2475 Additionally, the Offeror shall map the sections of the proposed PWS to the relevant Factor(s) 2-6.
2476 The Factor mapping asserted by the Offeror does not prevent the Government from considering other
2477 PWS sections under a particular Factor that the Government deems relevant even if the Offeror did
2478 not map that PWS section to the Factor; this mapping is purely to assist evaluators in identifying the
2479 PWS section that are most likely relevant.

2480
2481 **TAB K: Support Contractor Proposal Access Consent:** The Offeror shall submit a letter clearly
2482 stating whether permission is granted allowing the contractor support identified below access to the
2483 Offeror's proposal. The Offeror and its subcontractors may choose to execute a proposal access
2484 agreement with these support contractors. Prior to the submission of a Proposal, the Offeror or its
2485 subcontractors may email jedi-rfp@dds.mil to obtain the point of contact information for the
2486 contractor support companies to execute any necessary proposal access agreements.

2487
2488 Contractor support personnel from the below listed companies under existing contracts will be used
2489 for administrative purposes only. This assistance will not include analyzing or evaluating proposals.

- 2490
2491
 - Eagle Harbor Solutions
 - Suntiva

2492
2493
2494 Proprietary information submitted in response to this RFP will be protected from unauthorized
2495 disclosure as required by Subsection 27 of the Office of Procurement Policy Act as amended (41
2496 U.S.C. 423) as implemented in the FAR. These companies are bound contractually by OCI and non-
2497 disclosure clauses with respect to proprietary information. Support Contractor personnel will take all
2498 necessary action to preclude unauthorized use or disclosure of an Offeror's proprietary data.

2499 2500 Section L4: Volume II – Gate Criteria Submission Instructions

2501
2502 **FACTOR 1: GATE CRITERIA**
2503

JEDI Cloud RFP # HQ0034-18-R-0077_0002

2504 The Offeror shall provide the following information for Factor 1. For purposes of this Factor and its
 2505 sub-factors, Commercial Cloud Offering (CCO) means the CCO, as defined in Attachment J-8,
 2506 Definitions, being proposed by the Offeror for JEDI Cloud.

2507

2508 **Sub-factor 1.1 Elastic Usage (TAB A)**

2509

2510 The Offeror shall demonstrate compliance with this Sub-factor by providing a summary report for the
 2511 months of January 2018 and February 2018 that depicts each of the three metric areas detailed below
 2512 (*i.e.*, Network, Compute, Storage). The Offeror's proposal, for all aspects of this Sub-factor, must
 2513 explicitly depict CCO usage. CCO usage may include IaaS used to provide PaaS offerings, but must
 2514 exclude any IaaS or PaaS usage for the CCO provider's own use including intra-company usage
 2515 across different divisions or business units when those divisions or business units do not constitute
 2516 separate legal entities. For this Sub-factor, CCO usage is not limited to any market segment and can
 2517 include both government and non-government (public) customers.

2518

2519 The summary report shall include a table illustrating the addition of JEDI Cloud usage (as defined
 2520 below) relative to CCO usage for the months of January 2018 and February 2018, excluding any
 2521 services provided to a customer free of charge. Offerors may also include a narrative explaining how
 2522 JEDI Cloud usage would not represent a majority of the three metrics areas as specified. Specifically,
 2523 JEDI unclassified usage must be less than 50% of the CCO usage as demonstrated by the following:

2524

2525 1. Network - Volume of commercial client traffic, in bytes, for public internet ingress and egress (at
 2526 the logical cloud boundary outside of availability zones, *i.e.*, in and out of the CCO-controlled
 2527 infrastructure).

2528

a. CCO usage: aggregate of January 2018 and February 2018.

2529

b. For purposes of this evaluation, JEDI Cloud unclassified ingress is 10.6 Petabytes for two
 2530 months.

2531

c. For purposes of this evaluation, JEDI Cloud unclassified egress is 6.5 Petabytes for two
 2532 months.

2533

2534 2. Compute - Number of physical (not virtualized) compute (CPU and/or GPU) cores in use by
 2535 application servers, which are defined as those physical servers that host the virtualized
 2536 infrastructure and platform services used by end users (for example, a network router would not
 2537 satisfy this definition of application server).

2538

a. CCO usage: average compute cores in use for January 2018 and February 2018 calculated by
 2539 taking the sum of the total number of CPU and GPU cores in use each day between January
 2540 1st and February 28th, inclusive, and dividing it by the total number of days in that time
 2541 period (average = DailyTotalsSum ÷ 59).

2542

b. For purposes of this evaluation, JEDI Cloud unclassified average physical compute cores in
 2543 use by application servers is 46,000 cores.

2544

2545 3. Storage - Data, in bytes, for each of online, nearline, and offline averaged across January 2018
 2546 and February 2018.

2547

a. CCO usage: average storage in use for January 2018 and February 2018 calculated by taking
 2548 the sum of the total storage in use each day between January 1st and February 28th, inclusive,
 2549 and dividing it by the total number of days in that time period (average = DailyTotalsSum ÷
 2550 59).

2551

b. For purposes of this evaluation, JEDI unclassified data storage usage averages 50 Petabytes
 2552 online, 75 Petabytes nearline, and 200 Petabytes offline across the 2 months.

2553

2554 **Sub-factor 1.2 High Availability and Failover (TAB B)**

2555

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- 2556 The Offeror shall demonstrate high availability and failover of the CCO data centers, defined for
 2557 purposes of this Sub-factor as the physical locations containing the physical CCO hardware used to
 2558 provide unclassified IaaS and PaaS services, through the following:
 2559
- 2560 1. No fewer than three physical existing unclassified CCO data centers within the Customs Territory
 2561 of the United States, as defined in FAR 2.101, that are all supporting at least one IaaS offering
 2562 and at least one PaaS offering that are FedRAMP Moderate “Authorized” by the Joint
 2563 Authorization Board (JAB) or a Federal agency as demonstrated by official FedRAMP
 2564 documentation. Each data center identified must be capable of automated failover of all
 2565 computing, network, and storage services to one another as demonstrated by self-certification.
 2566 Geographic dispersion means that each identified data center is at least 150 miles from the others
 2567 using geodesic distance as demonstrated by either a physical address or GPS coordinates for each
 2568 data center;
 2569
 - 2570 2. Network availability through redundant and globally distributed points of presence controlled by
 2571 the Offeror, as defined in Section C4 of the RFP. Globally means that there must be at least one
 2572 point of presence on each continent (except Africa and Antarctica); for the purposes of this sub-
 2573 factor, the Sinai Peninsula is part of Africa and the Arabian Peninsula is part of Asia; redundant
 2574 means that there are at least two or more connections providing a total bandwidth capacity of at
 2575 least 40 Gigabits per second to each point of presence. The Offeror shall demonstrate this with a
 2576 table that depicts at least one point of presence for each continent (except Africa and Antarctica).
 2577 For each point of presence, the table shall include: the approximate location, the number of
 2578 connections to each point of presence, and the total bandwidth capacity for each connection;
 2579
 - 2580 3. Built-in data storage redundancy for online, nearline, and offline storage that protects against
 2581 data loss in the case of catastrophic data center failure as demonstrated by a listing and
 2582 description of the existing CCO offerings that provide built-in data storage redundancy for
 2583 online, nearline, and offline storage; and
 2584
 - 2585 4. Provide automatic monitoring of resource utilization and events (to include failures and
 2586 degradation of service) via web interface and application programming interfaces (APIs). These
 2587 APIs must have online documentation that is readily discoverable as demonstrated by providing a
 2588 static document capture of the web site documentation page for a and b below. Portions of
 2589 documentation are acceptable. The documentation for a and b below must include example code.
 2590 Each static document must include the publicly accessible URL of the source web page.
 2591 a. Getting the resource utilization for a given virtual machine identifier; and
 2592 b. Getting a listing of recent service health events by time and date range.
 2593

2594 **Sub-factor 1.3 Commerciality (TAB C)**

2596 The Offeror shall demonstrate the commerciality of the CCO through revenue information for
 2597 calendar year 2017 in an Offeror-preferred format. The Offeror shall indicate which portion of the
 2598 revenue is attributable to the CCO, the applicable company name(s) for the CCO revenue, and a
 2599 breakdown of the revenue by the type of customer (*e.g.*, U.S. Federal Government versus non-U.S.
 2600 Federal Government). To satisfy the commerciality of the CCO, the revenue information must show
 2601 that total revenue attributable to U.S. Federal Government usage is less than 50% of total CCO
 2602 revenue.
 2603

2604 The documentation evidencing control of unclassified offerings under Section C4 that the Offeror
 2605 submitted in Volume I, Contract Documentation will also be considered part of the proposal for this
 2606 Sub-factor.
 2607

2608 **Sub-factor 1.4 Offering Independence (TAB D)**

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2609
2610 The Offeror shall demonstrate through a detailed narrative that the proposed solution for storage,
2611 compute, and network IaaS does not require bundling with any particular PaaS or SaaS product.
2612 Exempted from this bundling prohibition is PaaS or SaaS that is not invoiced separately and also not
2613 deployed on user provisioned cloud resources. For example, the following would not be considered
2614 bundling of IaaS with a particular PaaS or SaaS product: managed monitoring or logging services that
2615 are not-separately-priced and provided in parallel to a provisioned virtual machine by the Offeror (not
2616 through the marketplace).

2617
2618 **Sub-factor 1.5 Automation (TAB E)**
2619

2620 The Offeror shall demonstrate an ability to meet automation requirements for an existing API for the
2621 proposed IaaS and PaaS offerings that is capable of creating (or provisioning, as appropriate) and
2622 reading resources as identified below. This shall be demonstrated by providing a static document
2623 capture of the web site documentation page for all items listed in paragraphs 1 through 5 below. Each
2624 static document must include the publicly accessible URL of the source web page. Portions of
2625 documentation are acceptable.
2626

- 2627 1. Identity and access management:
2628 a. creation of an account in the JEDI Cloud;
2629 b. creating time-limited federated authentication tokens; and
2630 c. assignment of role-based access control.
2631
2632 2. Provisioning:
2633 a. creation of a single compute instances;
2634 b. creation of a single object storage instance;
2635 c. creation of a single relational database instance; and
2636 d. creation of a load balancing instance for virtual machines.
2637
2638 3. Reading of billing data:
2639 a. for a single workspace given an identifier and time and date range; and
2640 b. for a group of workspaces as specified by the customer.
2641
2642 4. Reading of service usage data:
2643 a. usage, in hours, for all compute instances;
2644 b. usage, in hours, for all managed database instances; and
2645 c. usage, in hours, for a single compute instance based on a resource tag.
2646
2647 5. Security policy compliance:
2648 a. reading results of automated compliance scans for a single workspace; and
2649 b. reading results of automated compliance scans for a group of workspace as specified
2650 by the customer.
2651

2652 **Sub-factor 1.6 Commercial Cloud Offering Marketplace (TAB F)**
2653

- 2654 1. The Offeror shall demonstrate that the existing CCO includes an easy to use online marketplace
2655 (via web-accessible user interface) to deploy CCO and third-party platform and software service
2656 offerings onto the CCO infrastructure. The Offeror shall demonstrate the online marketplace by
2657 providing: 1) three examples of existing public catalog services for offerings for each of the
2658 categories below and 2) a narrative describing the process for end users to procure and deploy
2659 these services.
2660 a. Platform offerings, such as container solutions, container orchestration, code deployment, log
2661 analysis and monitoring;

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- 2662 b. Advanced data analytics tools, such as machine learning, artificial intelligence, or image
 2663 recognition;
 2664 c. Bring-your-own-license products for platform and software offerings from other than the
 2665 CCO provider; and
 2666 d. Free and open source platform and software offerings.
 2667
 2668 2. The Offeror shall also demonstrate the CCO marketplace with two real-time, continuous, silent
 2669 demonstration videos with time clock of an end user on a web interface acquiring and deploying:
 2670 (1) a third-party marketplace platform offering or third-party enterprise software offering, and (2)
 2671 a bring-your-own-license example from other than the CCO provider. Ease of use of self-service
 2672 deployment is measured by time to launch under optimal conditions. To meet the criteria for ease
 2673 of use, time to deploy must be less than 5 minutes based on the below criteria:
 2674 a. Time starts at page-load after authentication and ends after successful deployment of the
 2675 offering;
 2676 b. Time includes entering a license if required; and
 2677 c. Excluded from timing is the time to spin up any virtual machines to host the offering, so long
 2678 as the virtual machines are required and included in the offering. Any portion of the video
 2679 that should be excluded from timing should be marked accordingly.
 2680

2681 Acceptable video formats are MPEG4 and AVI.

2682
 2683 **Sub-factor 1.7 Data (TAB G)**
 2684

2685 The Offeror shall demonstrate that the proposed solution meets the following data requirements
 2686 through a self-certification and with detailed technical explanations of:

- 2687 1. Petabyte-scale storage and retrieval of online, nearline, and offline storage;
 2688 2. Object lifecycle management for data retention and migration that operates across online,
 2689 nearline, and offline storage.
 2690 3. Ability to receive the first byte from a nearline storage retrieval operation within 30 seconds as
 2691 demonstrated by request and response log artifacts; and
 2692 4. Ability to retrieve 250 terabytes of arbitrary, offline storage objects within 24 hours and be
 2693 accessible by applications deployed to the cloud provider's infrastructure in that time as
 2694 demonstrated by request and response log artifacts.
 2695

2696 **Section L5: Volume III – Technical Criteria Submission Instructions**
 2697

2698 **TECHNICAL PROPOSAL**
 2699

2700 **Performance Work Statement (PWS) (TAB A)**
 2701

- 2702 1. Required Content for PWS: The Offeror shall provide a PWS in response to Attachment L-1,
 2703 JEDI Cloud SOO. At a minimum, the Offeror's proposed PWS shall include all of the
 2704 information detailed below and may be presented in the Offeror's preferred format:
 2705 a. Detailed description of the work to be performed, including the services that the
 2706 Offeror proposes to perform to achieve the SOO. The description shall be organized
 2707 such that it clearly maps to the CLIN structure.
 2708 b. Table 5.1 (verbatim) from the SOO.
 2709 c. Table 5.2 (verbatim) from the SOO.
 2710

2711 (end TAB A)
 2712

2713 **NOTE: For Factors 2 through 7, addressed below, the proposed PWS and any of its attachments**
 2714 **will be considered a part of the Offeror's proposed approach. Additionally, to the extent the Offeror is**

APPENDIX G – REQUEST FOR PROPOSALS SECTION M: EVALUATION FOR AWARD

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3194 SECTION M: EVALUATION FOR AWARD OF ID/IQ CONTRACT AND TASK ORDERS**3195 Section M1: Basis for Award**

3196
3197 The Government intends to award a single ID/IQ contract for JEDI Cloud to the Offeror whose
3198 proposal conforms to the RFP requirements and represents the best value to the Government, as
3199 determined by the evaluation criteria described herein, IAW the FAR. Best value will be based on a
3200 detailed evaluation of all factors outlined below. In determining the best value, the Government may
3201 employ a tradeoff process allowing for an award to other than the Offeror proposing the lowest price
3202 or achieving the highest adjectival rating.

3203 A written notice of award or acceptance of an offer, furnished to the successful Offeror within the
3204 specified timeframe, shall result in a binding contract without further action by either party. Before
3205 the offer's specified expiration time, the Government may accept an offer, whether or not there are
3206 negotiations after its receipt, unless a written notice of withdrawal is received before award.

3207 When making the best value determination, only those Offerors who receive a rating of "Acceptable"
3208 for all of Factor 1 will be considered. The non-price factors, listed in descending order of importance,
3209 are as follows: Factor 2, Factor 3, Factor 4, Factor 5, Factor 8, Factor 6, and Factor 7. Non-price
3210 factors 2 through 8, when combined, are more important than Factor 9 Price. Factors 7 and 8 will only
3211 be evaluated after establishment of the competitive range. Price will become increasingly more
3212 important as the rating for each of the non-price factor ratings become increasingly equal. When the
3213 Offerors within the competitive range are considered essentially equal in terms of technical
3214 capability, or when Price is so significantly high as to diminish the value of the technical superiority
3215 to the Government, Price may become the determining factor for award.

3217 Section M2: Evaluation Process

3218
3219 The Government will employ a two-phase evaluation for this acquisition.

3220 Under Phase One, the Government will evaluate the Offeror's Volume II, Factor 1, Gate Evaluation
3221 Criteria submission, against the "Acceptable / Unacceptable" criteria identified below in Table M-2.
3222 Offerors who receive a rating of "Unacceptable" under any of the Gate Criteria Sub-factors will not
3223 be further evaluated. Thus, as an example, if an Offeror is rated as Unacceptable for Gate Criteria
3224 Sub-factor 1.2, the remainder of the proposal will not be evaluated and will not be considered for
3225 award.

3226 Under Phase Two of the evaluation process, the Government will evaluate the Offeror's proposal
3227 using the following steps:
3228

- 3229 1. If the rating is "Acceptable" for all Sub-factors under Factor 1, Gate Evaluation Criteria, the
3230 Offeror's proposal for Factors 2 through 6 and 9 will be evaluated.
- 3231 2. Upon completion of the evaluation in Phase One and Phase Two step 1, a competitive range
3232 will be established. Those Offerors in the competitive range will be invited to provide a Volume
3233 IV, Factor 7 - Small Business Participation Approach, Volume V, Factor 8 - Demonstration, and
3234 Volume VII, Small Business Subcontracting Plan, and will also be invited to engage in
3235 discussions (in the event the Government engages in discussions).
- 3236 3. Factors 7 and 8 will be evaluated. Any Offerors for Factor 8 Demonstration that receive a
3237 rating of "Marginal" or "Unacceptable" for Technical Capability or a Risk rating of "High" shall
3238 be eliminated from the competitive range and the proposal will not be further evaluated.

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- 3239 4. Upon completion of discussions (if any), any Offerors remaining in the competitive range
 3240 will be requested to submit a final proposal revision (FPR). The FPR shall be deemed to include
 3241 the already conducted Factor 8 Demonstration.
- 3242 5. The FPR will be evaluated IAW Section M. Any Offerors with a Risk Rating of “High” under
 3243 any Factor shall be deemed unawardable. Any Offerors with an adjectival rating below
 3244 “Acceptable” (see Tables M-3 and M-4) for any of the non-price factors (*i.e.*, Factors 2 through
 3245 8) shall not be considered for award.
- 3246 6. Based on FPR evaluation, a best value determination will be made IAW Section M.

3247 Debriefings will be conducted IAW FAR Subpart 15.5 and Class Deviation 2018-O0011, Enhanced
 3248 Postaward Debriefing Rights, dated 22 March 2018.

3249 **Section M3: Evaluation Factors**

3250

3251 **Factor 1 - Gate Evaluation Criteria**

3252

3253 Offerors’ proposals will be evaluated for technical acceptability on an “Acceptable / Unacceptable”
 3254 basis for each of the following sub-factors based on whether the proposal demonstrates the
 3255 requirements articulated in each sub-factor IAW the respective instructions detailed above in Section
 3256 L. Offerors’ proposals must be rated “Acceptable” under all Factor 1 sub-factors in order to receive
 3257 an overall rating of “Acceptable” for Factor 1 - Gate Evaluation Criteria. If a proposal is rated
 3258 “Unacceptable” for any Gate Evaluation Criteria sub-factor, the evaluation process will immediately
 3259 cease. The remainder of the proposal will not be evaluated and will not be considered for award.

3260

3261 **Sub-factor 1.1 - Elastic Usage**

3262

3263 The Government will evaluate whether the proposal clearly demonstrates that the addition of DoD
 3264 unclassified usage will not represent a majority of all unclassified usage, per the requirements in
 3265 Section L for this sub-factor.

3266

3267 **Sub-factor 1.2 - High Availability and Failover**

3268

3269 The Government will evaluate whether the proposal clearly demonstrates that CCO data centers are
 3270 sufficiently dispersed and can continue supporting the same level of DoD usage in the case of
 3271 catastrophic data center loss IAW the requirements in Section L for this sub-factor. The JEDI Cloud
 3272 Contracting Officer may validate claims of the IaaS and PaaS offerings being FedRAMP Moderate
 3273 “Authorized” by the Joint Authorization Board (JAB) or a Federal agency.

3274

3275 **Sub-factor 1.3 - Commerciality**

3276

3277 The Government will evaluate whether the proposal clearly demonstrates meeting the requirements of
 3278 commerciality IAW Section L for this sub-factor. The Government will also evaluate if the Offeror
 3279 provided sufficient documentation to demonstrate control of the unclassified environment IAW
 3280 Section C4 of the RFP.

3281

3282 **Sub-factor 1.4 - Offering Independence**

3283

3284 The Government will evaluate whether the proposal clearly demonstrates that the proposed solution
 3285 for storage, compute, and network IaaS, independent of each other, does not require bundling with
 3286 any particular PaaS or SaaS product IAW the requirements in Section L for this sub-factor.

3287

3288 **Sub-factor 1.5 - Automation**

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3289

3290 The Government will evaluate whether the proposal clearly demonstrates the ability to meet
3291 automation requirements IAW the requirements in Section L for this sub-factor.

3292

3293 **Sub-factor 1.6 - Commercial Cloud Offering Marketplace**

3294

3295 The Government will evaluate whether the proposal, including videos, clearly demonstrates that the
3296 CCO includes an easy to use marketplace for both Offeror native and third-party services that meets
3297 all of the requirements in Section L for this sub-factor.

3298

3299 **Sub-factor 1.7 - Data**

3300

3301 The Government will evaluate whether the proposal clearly demonstrates that the proposed solution
3302 meets the data requirements specified in Section L for this sub-factor.

3303

3304 (end Factor 1 evaluation criteria)

3305

3306 **For Factors 2 through 7**, in addition to the criteria listed below, the Government will also consider
3307 the degree to which the proposed approach and proposed ID/IQ PWS (for the sections that are
3308 applicable to the respective Factor) are consistent with each other and reflect an understanding of the
3309 Government's requirements (Section 3 and Section 5 of the SOO) as applicable to the respective
3310 Factor. The Government will also evaluate the degree to which any proposed desired capabilities
3311 from Section 4 of the JEDI Cloud SOO provide additional benefit to the Government as defined by
3312 the evaluation criteria under the respective Factor.

3313

3314 **Factor 2 - Logical Isolation and Secure Data Transfer**

3315

- 3316 1. The Government will evaluate the quality of the Offeror's proposed approach to achieving
3317 secure data transfer using a Transfer Cross Domain Solution that is consistent with the 2018
3318 Raise the Bar Cross Domain Solution Design and Implementation Requirements. The
3319 Government will also evaluate the degree to which the proposed Transfer Cross Domain
3320 Solution will address in Section L, Factor 2(1)(a-h).
- 3321 2. The Government will evaluate the quality of the Offeror's proposed logical isolation
3322 architecture and implementation for the classified and unclassified offerings and the degree to
3323 which the proposed solution will meet the requirements in Section L, Factor 2(2)(a-h).
- 3324 3. The Government will evaluate the quality of the Offeror's proposed approach to meeting the
3325 requirements for classified processing at different classification levels in accordance with
3326 section 1.3.2 in Attachment 2: Cyber Security Plan.
- 3327 4. For Price Scenario 3, the Government will evaluate the degree to which the technical
3328 approach and Unpriced BOE evidence a technically feasible approach when considering the
3329 secure data transfer requirements in Section L for this Factor and the specific scenario
3330 requirements in Attachment L-2; the Government will also consider the degree to which the
3331 technical approach and Unpriced BOE for Price Scenario 3 and the Offeror's overall secure
3332 data transfer approach under this Factor are consistent across the documents.

3333

3334 **Factor 3 - Tactical Edge**

3335

- 3336 1. For the proposed tactical edge devices under Section L, Factor 3(1)(a-h), the Government will
3337 evaluate how well the proposed approach balances portability against capability to enhance
3338 warfighting capacity across the range of military operations in support of national defense. The
3339 Government prefers a proposed solution that more broadly addresses the full range of military
3340 operations rather than a proposed solution that only addresses a subset of the range of military
3341 operations. The Government places far greater emphasis on existing solutions that meet all of the

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3342 requirements in Attachment L-1, JEDI Cloud SOO. The unclassified portable tactical edge device
 3343 from Category One must be in production by January 11, 2019; the unclassified modular data center
 3344 from Category Two must be in production by the first day of the post award kickoff event. The
 3345 Government will consider additional tactical edge capabilities that will be in production by October
 3346 14, 2019, but with lesser weight than existing solutions that meet the requirements in Attachment L-1,
 3347 JEDI Cloud SOO. The Government will also evaluate the degree to which the proposed tactical edge
 3348 devices address the requirements in Section L, Factor 3(1)(a-g) while also accounting for the
 3349 practicalities of using the proposed offerings in the tactical edge environment.

- 3350
 3351 2. Tactical Edge Devices for Categories One and Two
 3352 a. The Government will evaluate the degree to which the proposed approach for Category One
 3353 device(s) address the requirements in items Section L, Factor 3(2)(a)(i -viii). For paragraph
 3354 (2)(ix), the Government will evaluate how well the device(s) balances power requirements
 3355 and physical dimensions in delivering capability within the range of military operations to
 3356 forces deployed in support of a Geographic Combatant Commander or applicable training
 3357 exercises.
 3358
 3359 b. The Government will evaluate the degree to which the proposed approach for Category Two
 3360 device(s) address the requirements in Section L, Factor 3(2)(b)(i). For Factor 3(2)(b)(ii), the
 3361 Government will evaluate how well the proposed approach Category Two device(s) balances
 3362 power requirements and physical dimensions in delivering capability across the range of
 3363 military operations.
 3364
 3365 3. For Price Scenarios 2, 3, and 5, the Government will evaluate the degree to which the
 3366 technical approach and Unpriced BOEs evidence a technically feasible approach when considering
 3367 the requirements for this Factor and the specific scenario requirements in Attachment L-2; the
 3368 Government will also consider the degree to which the technical approach and Unpriced BOE for
 3369 Price Scenarios 2, 3, and 5, respectively, and the Offeror's overall tactical edge approach are
 3370 consistent across the documents.

3371
 3372 **Factor 4 - Information Security and Access Controls**

- 3373
 3374 1. The Government will evaluate the quality of the Offeror's proposed information security
 3375 approach and the degree to which the proposed solution meets the requirements in Section L, Factor
 3376 4(1)(a-h). As part of this evaluation, the Government will consider the following:
 3377 a. The frequency, accuracy, efficacy, and degree of automation of patching and vulnerability
 3378 management of hardware, software, and other system components. The degree to which
 3379 patching enforcement can be controlled based on vulnerability criticality.
 3380 b. The quality of supply chain risk management for hardware, software, and other system
 3381 components.
 3382 c. The degree to which the physical location and logical isolation of hosted services is
 3383 discoverable and auditable.
 3384 d. The degree to which breach identification is automated, and efficacy of processes for
 3385 mitigation, isolation, and reporting.
 3386 e. The degree to which tools and automation can prevent and remediate data spills, including the
 3387 efficacy of the process for locating and erasing all related data and purging all related media.
 3388 f. The degree to which the Offeror is able to erase data in any environment.
 3389 g. The degree to which data generated by all intrusion detection technology, network traffic
 3390 analysis tools, or any other threat detection performed is captured. The efficacy of analysis on
 3391 the data generated. The degree to which users can control the manner in which notifications

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- 3392 are communicated, and the breadth of configuration options for alerts generated by threat
 3393 detection systems. Whether the Offeror provides the ability to deliver raw logs to the
 3394 Government for analysis.
- 3395 h. The efficacy and quality of the process for onboarding new services into the Offeror's
 3396 marketplace in a rapid and secure manner. The degree to which the Offeror was able to
 3397 rapidly and securely add offerings to the marketplace in the examples provided.
 3398
- 3399 2. The Government will evaluate the quality of the Offeror's proposed access control approach
 3400 and the degree to which the proposed solution meets the requirements in Section L, Factor 4(2)(a-e).
 3401 As part of this evaluation, the Government will consider the following:
- 3402 a. The range of functionality for creating, applying, and managing technical policies for one
 3403 workspace and across all JEDI Cloud workspaces.
- 3404 b. The degree of granularity of the permissions available, and the ease of discovery and
 3405 assignment to roles.
- 3406 c. The efficacy of the capability to tag data objects and resources for billing tracking, access
 3407 control, and assignment of technical policy.
- 3408 d. The range of capability, ease of implementation, and use of modern standards for federated,
 3409 token-based, time-limited authentication and role assumption.
- 3410 e. The degree to which the Offeror has implemented modern standards for any API and CLI
 3411 access and the degree to which these APIs or CLIs, if any, match or exceed the abilities of the
 3412 Offeror's web interfaces for user, account, workspace, identity, and access management.
 3413
- 3414 **Factor 5 - Application and Data Hosting and Portability**
 3415
- 3416 1. For the Offeror's proposed approach to application and data hosting, the Government will
 3417 evaluate the quality of the Offeror's proposed solution and the degree to which the proposed approach
 3418 meets the requirements in Section L, Factor 5(1)(a-e).
 3419
- 3420 2. For the Offeror's proposed approach to application and data portability in Section L, Factor
 3421 5(2)(a-b), the Government will evaluate the following:
 3422
- 3423 a. Time to execute, time to extraction, ease of use, efficacy of the mechanisms, and format
 3424 interoperability when exporting all data and object storage and associated schemas for each
 3425 workspace scenario.
- 3426 b. Time to execute, time to extraction, ease of use, and format interoperability of data when
 3427 exporting system configurations, including, but not limited to, networking, routing, load
 3428 balancing, and OS configuration for each workspace scenario.
 3429
- 3430 3. For Price Scenario 1 and Price Scenario 6, the Government will evaluate the degree to which
 3431 the technical approach and Unpriced BOE evidence a technically feasible approach when considering
 3432 the application and data hosting requirements in Section L for this Factor and the specific scenario
 3433 requirements in Attachment L-2; the Government will also consider the degree to which the technical
 3434 approach and Unpriced BOE for Price Scenario 1 and Price Scenario 6, respectively, and the
 3435 Offeror's overall application and data hosting approach are consistent across the documents.
 3436
- 3437 4. For Price Scenario 4, the Government will evaluate the degree to which the technical
 3438 approach and Unpriced BOE evidence a technically feasible approach when considering the
 3439 portability requirements in Section L for this Factor and the specific scenario requirements in
 3440 Attachment L-2; the Government will also consider the degree to which the technical approach and
 3441 Unpriced BOE for Price Scenario 4 and the Offeror's overall application and data portability
 3442 approach under this Factor are consistent across the documents.

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3443

3444 **Factor 6 - Management and TO 001**

3445

3446 1. The Government will evaluate the extent to which the Offeror's proposal evidences an
3447 effective program management approach to accomplishing the requirements detailed in RFP Section
3448 C2 and the TO 001 PWS, and will also evaluate the likelihood that the approach will achieve
3449 effective and timely communication between the Offeror and CCPO.

3450

3451 2. The Government will evaluate the quality of the Offeror's proposed process for timely
3452 remediation of issues and the likelihood that issues will be timely remediated.

3453

3454 3. The Government will evaluate the quality of the Offeror's proposed risk management process
3455 and the likelihood that the proposed process and methods will result in preemptive mitigation for risk
3456 areas like tactical edge performance and security.

3457

3458 4. The Government will evaluate the likelihood that the proposed QASP will result in
3459 continuously meeting the performance metrics listed in Table 5.1 of the SOO through the life of the
3460 contract.

3461

3462 5. The Government will evaluate the extent to which the proposed property management
3463 system, plan, and commercial practices and standards are likely to result in protecting, securing, and
3464 reporting the identified GFP IAW FAR clause 52.245-1 and DFARS clause 252.211-7007.

3465

3466 **Factor 7 - Small Business Participation Approach**

3467

3468 The Government will evaluate the extent to which the proposal:

3469 1. Section 3 in Attachment J-10, Small Business Participation Commitment Document
3470 accurately identifies the type of SBC based on the NAICS identified by the Offeror.

3471 2. Identifies in Attachment J-10, Small Business Participation Commitment Document, the type
3472 and variety of work each SBC will perform under CLINs x003.

3473 3. Achieves the Government's small business participation objectives for CLINs x003,
3474 Unclassified Cloud Support Package, with substantive commitments for each SBC listed in
3475 Attachment J-10, Small Business Participation Commitment Document. Offerors that propose 0% for
3476 small business participation shall be deemed Unacceptable.

3477 **Factor 8 - Demonstration**

3478

3479 The Government will evaluate the extent to which the scenarios are successfully demonstrated using
3480 the proposed approach for Factors 1 through 6. The Government shall have access to all materials
3481 produced during demonstration as a constituent element of evaluation under Factor 8.

3482

3483 **Factor 9 - Price**

3484

3485 The price factor will be evaluated IAW FAR Subpart 12.209.

3486

3487 The Government has initially determined that adequate price competition is anticipated for this
3488 Source Selection. Certified cost or pricing data is not currently required. IAW FAR Subparts 15.403-
3489 1(b) and 15.403-3(a), other than certified cost or pricing data may be required to support a
3490 determination of price reasonableness. Certified cost or pricing data or other than certified cost or
3491 pricing data, if required to be submitted, shall be provided IAW FAR Subpart 15.403-5. If, after

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3492 receipt of proposals, the Government determines that there is insufficient data available to determine
3493 price reasonableness and none of the exceptions in FAR Subpart 15.403-1 apply, the Offeror shall be
3494 required to submit additional cost or pricing data.
3495

3496 The Price Volume will be evaluated with respect to accuracy and completeness. This process will
3497 involve verification that figures are correctly calculated and that proposed prices, and any applicable
3498 discounts, premiums, or fees, are accurate across the entire Price Volume. The Unpriced BOEs for
3499 each price scenario will be evaluated under the applicable Factor as specified in the Factors 2 through
3500 5 evaluation criteria.

3501 Task Order Price: The price for TO 001 will be evaluated to determine if it is fair and reasonable,
3502 complete, and accurate. Evaluation of options will not obligate the Government to exercise the option.
3503

3504 Total Evaluated Price: If there are any inconsistencies across the price proposal, or accuracy and
3505 completeness issues, that prevent the Government from identifying the proposed fixed unit prices
3506 such that the Government cannot derive the Total Evaluated Price (TEP), then the proposal may be
3507 deemed unacceptable. The Government will calculate TEP based on the following Table.
3508

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3509 **Table M-1 Total Evaluated Price**

Price Component	Units	Unit Price	Total Price
Price Scenario 1 Total Proposed Price			As proposed
Price Scenario 2 Total Proposed			As proposed
Price Scenario 3 Total Proposed			As proposed
Price Scenario 4 Total Proposed			As proposed
Price Scenario 5 Total Proposed			As proposed
Price Scenario 6 Total Proposed			As proposed
Portability Plan, CLIN 0005	4 units (assuming 2 units are ordered per year for the Base Ordering Period for purposes of TEP only)	As proposed	4 Units X Unit Price = Total Price
Portability Plan, CLIN 1005	6 units (assuming 2 units are ordered per year for the Option 1 Ordering Period for purposes of TEP only)	As proposed	6 Units X Unit Price = Total Price
Portability Plan, CLIN 2005	6 units (assuming 2 units are ordered per year for the Option 2 Ordering Period for purposes of TEP only)	As proposed	6 Units X Unit Price = Total Price
Portability Plan, CLIN 3005	4 units (assuming 2 units are ordered per year for the Option 3 Ordering Period for purposes of TEP only)	As proposed	4 Units X Unit Price = Total Price
Portability Test, CLIN 0006	4 units (assuming 2 units are ordered per year for the Base Ordering Period for purposes of TEP only)	As proposed	4 Units X Unit Price = Total Price
Portability Test, CLIN 1006	6 units (assuming 2 units are ordered per year for the Option 1 Ordering Period for purposes of TEP only)	As proposed	6 Units X Unit Price = Total Price
Portability Test, CLIN 2006	6 units (assuming 2 units are ordered per year for the Option 2 Ordering Period for purposes of TEP only)	As proposed	6 Units X Unit Price = Total Price
Portability Test, CLIN 3006	4 units (assuming 2 units are ordered per year for the Option 3 Ordering Period for purposes of TEP only)	As proposed	4 Units X Unit Price = Total Price
CCPO Program Management Support, CLIN 0007	24 units (assuming all months are ordered for purposes of TEP only)	As proposed	24 Units X Unit Price = Total Price
CCPO Program Management Support, CLIN 1007	36 units (assuming all months are ordered for purposes of TEP only)	As proposed	36 Units X Unit Price = Total Price
CCPO Program Management Support, CLIN 2007	36 units (assuming all months are ordered for purposes of TEP only)	As proposed	36 Units X Unit Price = Total Price
CCPO Program Management Support, CLIN 3007	24 units (assuming all months are ordered for purposes of TEP only)	As proposed	24 Units X Unit Price = Total Price
TEP			Summation of all Total Prices

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3510

3511 **Section M4: Technical Capability Performance Evaluation Ratings and Definitions**

3512

3513 1. The following rating scale will be used to evaluate the Offeror’s Proposal for Factor 1, Gate
3514 Evaluation Criteria (and subsequent Sub-factors):

3515

3516 **Table M-2**

Rating	Description
Acceptable	Proposal meets requirements and indicates an adequate approach and understanding of the requirements. Proposal has no strengths or deficiencies.
Unacceptable	Proposal does not meet requirements and contains one or more deficiencies and is unawardable.

3517

3518 2. The following Technical adjectival rating scale will be used to evaluate the Offeror’s
3519 Proposal for Factors 2 through 6, and Factor 8:

3520 **Table M-3**

Adjectival Rating	Description
Outstanding	Proposal meets requirements and indicates an exceptional approach and understanding of the requirements. The proposal contains multiple strengths and no deficiencies.
Good	Proposal meets requirements and indicates a thorough approach and understanding of the requirements. Proposal contains at least one strength and no deficiencies.
Acceptable	Proposal meets requirements and indicates an adequate approach and understanding of the requirements. Proposal has no strengths or deficiencies.
Marginal	Proposal does not clearly meet requirements and has not demonstrated an adequate approach and understanding of the requirements.
Unacceptable	Proposal does not meet requirements and contains one or more deficiencies and is unawardable.

3521

3522 3. The following adjectival rating scale will be used to evaluate the Offeror’s Proposal for
3523 Factor 7, Small Business Participation Approach:

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3530 **Table M-4**

Adjectival Rating	Description
Outstanding	Proposal indicates an exceptional approach and understanding of the small business objectives.
Good	Proposal indicates a thorough approach and understanding of the small business objectives.
Acceptable	Proposal indicates an adequate approach and understanding of small business objectives.
Marginal	Proposal has not demonstrated an adequate approach and understanding of the small business objectives.
Unacceptable	Proposal does not meet small business objectives.

3531 4. The following Risk adjectival rating scale will be used to evaluate the Offeror's Proposal for
 3532 Factors 2 through 6, and Factor 8:

3533 **Table M-5**

Adjectival Rating	Description
Low	Proposal may contain weakness(es) which have little potential to cause disruption of schedule, increased cost or degradation of performance. Normal contractor effort and normal Government monitoring will likely be able to overcome any difficulties.
Moderate	Proposal contains a significant weakness or combination of weaknesses which may potentially cause disruption of schedule, increased cost or degradation of performance. Special contractor emphasis and close Government monitoring will likely be able to overcome difficulties.
High	Proposal contains a significant weakness or combination of weaknesses which is likely to cause significant disruption of schedule, increased cost or degradation of performance. Is unlikely to overcome the difficulties, even with special contractor emphasis and close Government monitoring.
Unacceptable	Proposal contains a material failure or a combination of significant weaknesses that increases the risk of unsuccessful performance to an unacceptable level.

3534
 3535 **Section M5: Solicitation Provision**
 3536
 3537 The following provision is incorporated by reference:
 3538

3539 52.217-5 Evaluation of Options JUL 1990

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4800 Mark Center Drive
Alexandria, Virginia 22350-1500
www.dodig.mil
DoD Hotline 1.800.424.9098

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