



**Testimony of Mandy Smithberger, Director of the Center for Defense Information
Project On Government Oversight
before the Senate Budget Committee
on “Waste, Fraud, Cost Overruns, and Auditing at the Pentagon”
May 12, 2021**

Thank you Chairman Sanders, Ranking Member Graham, and members of the committee for inviting me to testify before you today. I’m Mandy Smithberger, the director of the Center for Defense Information at the Project On Government Oversight. POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles. Forty years ago, POGO was founded by Pentagon insiders who were concerned about the department’s procurement of ineffective and overpriced weapons. Throughout our history we have promoted wise spending and have sought improvements to better protect military, civilian, intelligence, and contractor whistleblowers.

I want to thank the committee for holding this hearing examining spending at the Department of Defense. I also want to thank the chairman for his leadership last year in offering an amendment that would have cut last year’s defense budget by 10% and shifted those funds to education, health care, and reducing poverty.¹

For today’s hearing, I’d like to particularly focus on what drives wasteful and endless Pentagon spending. While Congress and the public await President Joe Biden’s budget for fiscal year 2022, what we know so far shows that Defense Department spending continues to increase at an unsustainable rate. Significant cuts to the department’s budget are necessary to create the incentives and pressure for reforms that address how the department spends its money and how it fails to set priorities. Testimony heard before this committee nearly 40 years ago from then-Department of Defense analyst Franklin Spinney largely remains true: Pursuing gold-plated weapons has resulted in paying too much money for too little capability.² The increasingly fragile and expensive weapon systems undermine our military effectiveness.

The department needs broad reforms. Buying unproven weapon systems in quantity before testing is complete, awarding contracts to companies with histories of waste and misconduct, and giving disproportionate funding to an agency that is years away from being able to pass an audit

¹ Senator Bernie Sanders, “Sanders Calls on Senate to Reject ‘Exploding’ Military Budget, Invest in Human Needs,” Press Release, June 30, 2020. <https://www.sanders.senate.gov/press-releases/sanders-calls-on-senate-to-reject-exploding-military-budget-invest-in-human-needs/>

² Wesley G. Pippert, “A Defense Department systems analyst, reporting on his detailed...,” UPI, February 25, 1983. <https://www.upi.com/Archives/1983/02/25/A-Defense-Department-systems-analyst-reporting-on-his-detailed/4355414997200/>

wastes taxpayer dollars and reduces overall readiness.³ The only way there will ever be reform is if there is accountability for failed programs and wasted funds. That accountability must include real budget consequences. Throwing even more money at the department will only make the problems worse.

There are important lessons that can be learned by looking at what goods and services the department buys and how it buys them. The department's most expensive program—the F-35 Joint Strike Fighter—is an instructive case study of current problems and their expensive consequences.

The F-35: A Case Study in Problems with What the Department Buys

The F-35 was sold to the public as a relatively inexpensive fighter that would replace the A-10 and F-16 in the Air Force, the Harrier and F-18 in the Marine Corps, and the F-18 in the Navy.⁴ Each new plane would cost between \$40 million and \$50 million, and the total cost of developing and producing the aircraft would come to \$200 billion.⁵ Twenty years later the costs have doubled, and the department is reviewing whether the program will be able to affordably meet our national security needs.⁶

The sad saga of how the F-35 developed into the deeply flawed program it is today is complicated, but most of the problems can be boiled down to three things: complexity, concurrency, and intellectual property.

When it comes to what the Pentagon buys, unnecessary complexity is certainly one of the biggest cost drivers. Much of the complexity in weapon systems is based on overly optimistic, and often self-serving, assumptions and promises from contractors about being able to trade technology for personnel. In the F-35 program, this complexity is one of the most significant challenges to resolving problems identified in testing and modernization of the fleet.⁷ In the end, it adds considerably to the cost of a program and harms national security.

Another significant problem is concurrency—the overlap of production and testing. The department consistently fails to “fly” a system before they buy it. The F-35 program exemplifies

³ Richard Sisk, “After 3 Failures, Pentagon Now Says It Won’t Be Able to Produce a ‘Clean’ Audit Until 2027,” *Military.com*, November 17, 2020. <https://www.military.com/daily-news/2020/11/17/after-3-failures-pentagon-now-says-it-wont-be-able-produce-clean-audit-until-2027.html>

⁴ Jeremiah Gertler, Congressional Research Service, *F-35 Joint Strike Fighter (JSF) Program*, RL30563 (May 27, 2020), 2-4. <https://fas.org/sgp/crs/weapons/RL30563.pdf>

⁵ “Lockheed awarded contract,” *CNN Money*, October 26, 2001. <https://money.cnn.com/2001/10/26/companies/strikefighter/>

⁶ Dan Grazier, “Selective Arithmetic to Hide the F-35’s True Costs,” Project On Government Oversight, October 21, 2020. <https://www.pogo.org/analysis/2020/10/selective-arithmetic-to-hide-the-f-35s-true-costs/>; Paul McLeary, “New Hicks Memo Sets Acquisition, Force Posture 2022 Budget Priorities,” *Breaking Defense*, February 24, 2021. <https://breakingdefense.com/2021/02/exclusive-hicks-memo-sets-2022-budget-priorities/>

⁷ Dan Grazier, “Uncorrected Design Flaws, Cyber-Vulnerabilities, and Unreliability Plague the F-35 Program,” Project On Government Oversight, March 24, 2020. <https://www.pogo.org/analysis/2020/03/uncorrected-design-flaws-cyber-vulnerabilities-and-unreliability-plague-the-f-35-program/>; Dan Grazier, “Is the F-35 Program at a Crossroads?” Project On Government Oversight, February 23, 2021. <https://www.pogo.org/analysis/2021/02/is-the-f-35-program-at-a-crossroads/>

the costs and headaches of failing to follow this common-sense principle. Frank Kendall, who was then in charge of Pentagon acquisition and was recently nominated to be Air Force Secretary, called his predecessors' decision to produce hundreds of the jets before the testing was complete "acquisition malpractice."⁸ At one point the costs of retrofitting the aircraft already in hangars to correct problems later uncovered during testing seemed so high that the department contemplated leaving \$21 billion worth of "concurrency orphan" jets without the upgrades necessary to make them fully combat capable.⁹

Failing to secure the intellectual property rights for systems the department pays to develop is also a significant problem.¹⁰ In the case of the F-35, Lockheed Martin controls the technical data rights, including design details and software code.¹¹ In 2014 the Government Accountability Office reported to Congress that the program's inability to access this information limits the government's ability to control costs. It makes it more difficult to bring some maintenance work inhouse, and stifles contractor competition and the government's ability to compete that maintenance work through support contracts to other vendors.¹² There is a growing understanding that the government must secure more of these rights, but implementation remains delayed. The department is apparently taking this issue more seriously: The Government Accountability Office reported in its most recent report on the aircraft that the F-35 program is in the process of developing its intellectual property strategy for the program.¹³ Still, the F-35 program has yet to complete that strategy and is a long way from securing these rights. Moreover, we expect to see significant industry pushback because, as *Defense One* pointed out, these reforms are "dangerous" to contractors' business models.¹⁴ For the department to be successful in securing these rights, they will need support from Congress.

At the beginning of the F-35 program, the public image of the aircraft was that it would be "more Chevrolet than Porsche."¹⁵ A lot has changed since then. The department's own cost data shows each variant of the F-35 costs more than \$100 million per aircraft.¹⁶ Testing remains incomplete, but Lockheed Martin has already delivered 365 F-35s to the military services, with taxpayers on the hook for 733 as of March 2021.¹⁷ The program's high operational costs and its low

⁸ Lee Ferran, "US Weapons Man: F-35 Fighter Plan was 'Acquisition Malpractice,'" *ABC News*, February 7, 2012. <https://abcnews.go.com/Blotter/35-fighter-plan-acquisition-malpractice-pentagon-official/story?id=15530008>

⁹ Dan Grazier, "\$21 Billion Worth of F-35 Concurrency Orphans?" Project On Government Oversight, October 12, 2017. <https://www.pogo.org/analysis/2017/10/21-billion-worth-of-f-35-concurrency-orphans/>

¹⁰ Senator Chuck Grassley, "Grassley on Price Gouging at the Pentagon," (speech, Senate floor, Washington, DC, May 15, 2019). <https://www.grassley.senate.gov/news/news-releases/grassley-price-gouging-pentagon>

¹¹ Dan Grazier, "The F-35 and the Captured State," Project On Government Oversight, June 10, 2019. <https://www.pogo.org/analysis/2019/06/the-f-35-and-the-captured-state/>

¹² Government Accountability Office, *F-35 Sustainment: Need for Affordable Strategy, Greater Attention to Risks, and Improved Cost Estimates*, GAO-14-778 (September 23, 2014), 22. <https://www.gao.gov/assets/gao-14-778.pdf>

¹³ Diana Maurer, Government Accountability Office, *F-35 Sustainment: Enhanced Attention to and Oversight of F-35 Affordability Are Needed*, GAO-21-505T (April 22, 2021), 10. <https://www.gao.gov/assets/gao-21-505t.pdf>

¹⁴ Patrick Tucker, "Free the Data: Vice Chiefs Launch an Acquisition Crusade," *Defense One*, April 20, 2021. <https://www.defenseone.com/technology/2021/04/free-data-vice-chiefs-launch-crusade-fix-key-acquisition-problem/173499/>

¹⁵ James Dao and Laura M. Holson, "Lockheed Wins \$200 Billion Deal for Fighter Jet," *New York Times*, October 27, 2001. <https://www.nytimes.com/2001/10/27/us/lockheed-wins-200-billion-deal-for-fighter-jet.html>

¹⁶ Dan Grazier, "Selective Arithmetic to Hide the F-35's True Costs" [see note 6].

¹⁷ Dan Grazier and Winslow Wheeler, "F-35 Changes Needed While Still in Infancy," Project On Government Oversight, April 7, 2021. <https://www.pogo.org/analysis/2021/04/f-35-changes-needed-while-still-in-infancy/>

availability rate raise serious concerns about whether we have enough F-35s available for combat in high-end conflicts.¹⁸

Rather than having a workhorse Chevy of a fighter jet, the chief of staff for the Air Force has indicated the F-35 is more of a Porsche to be used sparingly.¹⁹

While there are many lessons to be drawn from the F-35 program, there are a few particularly important ones that will reduce the corrupting influence of the military-industrial complex over *what* the Pentagon buys:

- **Fly before you buy.** While we understand the need to speed up the acquisition process, putting immature and unproven technology into production is costly and undermines readiness. The cost overruns eat into other department priorities, including modernization, and create preventable operational risks. Additionally, as the National Commission on Military Aviation Safety found, unanticipated maintenance challenges with the F-35 fleet took resources away from maintaining other aircraft in the fleet.²⁰
- **Insist on good data from the beginning.** It is a persistent problem in weapon acquisition programs that the price of programs increase even as the promised capabilities fail to materialize. Preventing this from occurring means getting as much right as possible at the beginning of the program through a process that meaningfully analyzes alternatives for new systems, leverages competition and prototyping, and enables oversight and transparency throughout the process.²¹
- **Beware complexity.** As I discuss below, sustainment contracts are becoming a major cost-driver on weapon systems. While a system's complexity can be profitable for the companies that have the market cornered because of their expertise in maintaining the system, it also drives down readiness rates.²² The reality is we end up paying a premium for a less effective military.
- **Secure intellectual property rights to enhance competition.** Congress should strengthen protections for taxpayers' rights to intellectual property information paid for through government awards, and make it a presumption that a contracting officer will secure these rights up front unless a contractor obtains a waiver. Any waivers should be sent to the appropriate oversight committees and be evaluated by the Government Accountability Office.
- **Halt orders for new F-35s.** For the F-35 program specifically, we urge Congress to put a hold on purchasing any more F-35s until operational testing is complete and the director

¹⁸ John A. Tirpak, "Make-or-Break Time for the F-35," *Air Force Magazine*, April 23, 2021.

<https://www.airforcemag.com/article/make-or-break-time-for-the-f-35/>

¹⁹ Thomas Newdick, "Air Force Boss Wants Clean-Sheet Fighter That's Less Advanced Than F-35 to Replace F-16," *The Drive*, February 18, 2021. <https://www.thedrive.com/the-war-zone/39316/air-force-boss-wants-clean-sheet-fighter-thats-less-advanced-than-f-35-to-replace-f-16>

²⁰ National Commission on Military Aviation Safety, *Report to the President and Congress of the United States*, (December 1, 2020), 39. https://www.militaryaviationsafety.gov/report/NCMAS_Final_Report.pdf

²¹ Winslow Wheeler and Tom Christie, "Refusing to Misunderstand the Defense Acquisition Problem," Project On Government Oversight, October 7, 2014. <https://www.pogo.org/investigation/2014/10/refusing-to-misunderstand-defense-acquisition-problem/>

²² Dan Grazier, "The Complexity Vortex," Project On Government Oversight, June 6, 2018. <https://www.pogo.org/investigation/2018/06/complexity-vortex/>

of operational test and evaluation declares every variant fully combat effective and fully suitable for use. Buying more F-35s before testing is complete exacerbates the problems already seen in the fleet, and raises the costs of retrofits and design changes.²³

The conventional wisdom is that the F-35 program is politically untouchable due to sunk costs and because it has contracts spread out across the country.²⁴ It's difficult to come up with a bigger indictment of our acquisition approach than continuing to buy a weapon because our political system is too corrupt to change course. We sincerely hope the conventional wisdom is wrong and that our political leaders can both address the F-35 program's problems and prevent its mistakes from being repeated in the future.

An Acquisition System Built to *Increase* Costs

One of the largest drivers of increased spending is how the defense budget is often used for self-dealing and enrichment. Our defense budget should be based on what we need to keep our country safe. But too often conflicts of interest, particularly for senior Pentagon officials who go on to work for the defense contractors delivering goods and services to the government, are what drive the budget. In the most recent government review of this issue, a Government Accountability Office survey of contractors found that 52 contractors employed 2,435 former Department of Defense officials who had “previously served as generals, admirals, senior executives, program managers, contracting officers, or in other acquisition positions which made them subject to restrictions on their post-DOD employment.”²⁵ POGO's own 2018 investigation found that from 2008 to 2018 at least 380 high-ranking department officials and military officers became lobbyists, board members, executives, or consultants for defense contractors within two years of leaving public service.²⁶ This revolving door results in the appearance (and in some instances, documented evidence) of officials confusing what is in the best interest of our national security with what is in the best financial interests of defense contractors—excessively large Pentagon budgets, endless wars, and overpriced weapon systems.

While I've already discussed some of the major challenges in how the department purchases major weapon systems, it's also important to examine how the department gets fleeced even when it's buying a pin or a drainpipe.²⁷ We've tracked spare parts overcharges for decades, and the issue is not getting better. The overpriced plastic toilet seat covers that cost \$640 in the 1980s now cost \$10,000.²⁸ While TransDigm became appropriately infamous for charging profit

²³ Dan Grazier and Winslow Wheeler, “F-35 Changes Needed While Still in Infancy” [see note 17].

²⁴ “The Fighter Jet That's Too Pricey to Fail,” *New York Times*, March 12, 2021.

<https://www.nytimes.com/2021/03/12/opinion/f-35-fighter-jet-cost.html>

²⁵ Government Accountability Office, *Defense Contracting: Post-Government Employment of Former DOD Officials Needs Greater Transparency*, GAO-08-485 (May 21, 2008), 4. <https://www.gao.gov/assets/gao-08-485.pdf>

²⁶ Mandy Smithberger, Project On Government Oversight, *Brass Parachutes: The Problem of the Pentagon Revolving Door* (November 5, 2018). <https://www.pogo.org/report/2018/11/brass-parachutes/>

²⁷ Neil Gordon, “Spare Us Already: Investigators Find More Instances of Gross Overbilling on Defense Contracts,” Project On Government Oversight, August 1, 2011. <https://www.pogo.org/analysis/2011/08/spare-us-already-investigators-find-more-instances-of-gross-overbilling-on-defense-contracts/>

²⁸ Jack Smith, “\$37 screws, a \$7,622 coffee maker, \$640 toilet seats; suppliers to our military just won't be oversold,” *Los Angeles Times*, July 30, 1986. <https://www.latimes.com/archives/la-xpm-1986-07-30-vw-18804-story.html>; Dan Grazier, “Why Do Air Force Planes Need \$10,000 Toilet Seat Covers?” *The American*

margins as high as 4,000%, other contractors regularly engage in similar practices to take advantage of taxpayers: Reports from the Department of Defense inspector general show the department paid excessive amounts for spare parts from Boeing, Lockheed Martin, Raytheon, and other top defense contractors.²⁹ Overcharges to the government have included paying \$2,286 for a landing gear that should have cost \$10; \$71 for a pin that should have cost less than a nickel; and \$8,124 for a bevel gear that should have cost \$445.³⁰

One of the root causes of these overcharges is misuse of commercial item designations, which makes it difficult for the government to obtain cost or pricing information to determine whether the prices contractors are charging are reasonable.³¹ When an item is designated as commercial, contractors generally do not have to provide cost or pricing information to the government. POGO supports the department buying genuinely commercial items, especially when there is competition, but determining whether something is truly commercial should be based on whether the item is sold on the open market to the public in substantial quantities. It can be difficult for the public to know how much we are overcharged for these parts because the department and contractors consider those overcharges to be commercial proprietary information.³² If something were truly commercial, prices wouldn't be secret. Recent changes to acquisition laws have exacerbated the problem, making it difficult for the government to obtain cost or pricing data once another governmental entity has already accepted something is commercial.³³ Worse, once the government has accepted the prices, it can be difficult for the government to secure a refund, if auditors find there were overcharges, because companies aren't actually breaking any laws.³⁴ Reforming the definition of "commercial item," as the Obama administration previously

Conservative, June 14, 2018. <https://www.theamericanconservative.com/articles/why-do-air-force-planes-need-10000-toilet-seat-covers/>

²⁹ Aaron Gregg, "Military parts supplier TransDigm draws scrutiny over prices," *Washington Post*, June 8, 2019. <https://www.washingtonpost.com/business/2019/06/08/military-parts-supplier-transdigm-draws-scrutiny-over-prices/>; Project On Government Oversight, "Department of Defense Inspector General Reports Questioning Spare Part Costs," May 29, 2019. <https://www.documentcloud.org/documents/6152472-IG-Reports-Questioning-Spare-Part-Costs>; Scott Amey and Mandy Smithberger, Project On Government Oversight, *In for a TransDigm, Out for Billions* (May 29, 2019). <https://www.pogo.org/report/2019/05/in-for-a-transdigm-out-for-billions/>

³⁰ Neil Gordon, "New Details Emerge in Boeing Spare Parts Overbilling," Project On Government Oversight, June 21, 2013. <https://www.pogo.org/analysis/2013/06/new-details-emerge-in-boeing-spare-parts-overbilling/>; Neil Gordon, "Spare Us Already" [see note 27]; Nick Schwellenbach, "Leaked Audit: Boeing Overcharged Army Up to 177,000 Percent on Helicopter Spare Parts," Project On Government Oversight, June 28, 2011. <https://www.pogo.org/investigation/2011/06/leaked-audit-boeing-overcharged-army-up-to-177000-percent-on-helicopter-spare-parts/>; Mandy Smithberger, "The Unredacted Truth About Spare Parts Overcharges," Project On Government Oversight, February 23, 2015. <https://www.pogo.org/analysis/2015/02/unredacted-truth-about-spare-parts-overcharges/>

³¹ For more on this topic, see Richard Loeb, *Caveat Emptor: Reversing the Anti-Competitive and Over-Pricing Policies that Plague Government Contracting*, American Economic Liberties Project Working Paper Series On Corporate Power #4 (June 2020). https://www.economicliberties.us/wp-content/uploads/2020/06/Working-Paper-Series-on-Corporate-Power_4.pdf

³² Neil Gordon, "A Blatant Example of Pointless Government Secrecy," Project On Government Oversight, July 8, 2014. <https://www.pogo.org/analysis/2014/07/blatant-example-of-pointless-government-secrecy/>

³³ Scott Amey and Mandy Smithberger, *In for a TransDigm, Out for Billions* [see note 29]; Department of Defense Inspector General, *Review of Parts Purchased From TransDigm Group, Inc.* (February 25, 2019), p. 93. <https://media.defense.gov/2019/Feb/27/2002093922/-1/-1/1/DODIG-2019-060.PDF>

³⁴ David Dayen, "How Rep. Ro Khanna Got a Price-Gouging Defense Contractor to Return \$16.1 Million to the Pentagon," *The Intercept*, May 28, 2019. <https://theintercept.com/2019/05/28/ro-khanna-transdigm-refund-pentagon/>; Richard Loeb, *Caveat Emptor*, 4 [see note 31].

proposed, is an overdue reform that will help reduce overpayments and waste.³⁵ At the very least, certified cost or pricing data should be provided to the government in any procurement that is sole source, even in instances when goods and services are claimed to be commercial.

While many people think of the Department of Defense as being in the business of buying planes, tanks, and ships, nearly 50% of what the department buys is services. Last year the department spent nearly \$204 billion on service contracts.³⁶ As is the case for spare parts, there are instances of outrageous overcharges—like bilking the government for a 100-hour workday.³⁷ Tracking the size and scope of the service workforce, however, has been a challenge. The main way to track that information has been through service contractor inventories. The most recent publicly available data clearly breaking down costs and contractor full time equivalents across the department is from fiscal year 2015.³⁸

It is essential to better track this data because service contract spending provides one of the most significant opportunities for savings. POGO’s review of service contracting data found contractor employees cost nearly three times more than the average civilian employee.³⁹ The Defense Business Board also highlighted opportunities for cost savings for service contractors in its proposal for ways the department could save \$125 billion over five years.⁴⁰ The opportunity for savings was confirmed for a third time in a subsequent review by the Pentagon’s cost estimating shop.⁴¹

³⁵ Scott Amey, “Defense Department’s New Definition of ‘Commercial Item’ Will Save Money,” Project On Government Oversight, May 2, 2012. <https://www.pogo.org/analysis/2012/05/defense-departments-new-definition-of-commercial-item-will-save-money/>

³⁶ “Spending Explorer” USASpending, data for Department of Defense, service contracting and research and development contracts, FY 2020.

<https://www.usaspending.gov/search/?hash=9b0923e53d6f7600c5b407bdf43b728a> (accessed May 7, 2021)

³⁷ Neil Gordon, “The 100-Hour Workday is the New \$435 Hammer,” Project On Government Oversight, October 19, 2015. <https://www.pogo.org/analysis/2015/10/100-hour-workday-is-new-435-hammer/>

³⁸ Office of the Assistant Secretary of Defense for Manpower & Reserve Affairs, *Defense Manpower Requirements Report* (December 2018), 133-135.

https://prhome.defense.gov/Portals/52/Documents/MRA_Docs/TFM/Reports/Final%20FY18%20DMRR%2011Dec2017.pdf?ver=2018-02-03-141625-140; Incomplete data was provided to Congress in 2018. Office of the Under

Secretary of Defense for Acquisition and Sustainment, *Summary Report to Congress of the Department of Defense Fiscal Year 2016 Inventory of Contracted Services* (February 2018), 1.

<https://www.documentcloud.org/documents/20697443-fy-2016-inventory-of-contracted-services-for-the-department-of-defense>; The inventories available through the Department’s Defense Pricing and Contracting website are significantly less useful and transparent for oversight.

https://www.acq.osd.mil/dpap/cpic/cp/inventory_of_services_contracts.html

³⁹ Scott Amey, “DoD Contractors Cost Nearly 3 Times More than DoD Civilians,” Project On Government Oversight, November 30, 2012. <https://www.pogo.org/analysis/2012/11/dod-contractors-cost-nearly-3-times-more-than-dod-civilians/>

⁴⁰ Defense Business Board, *Transforming DoD’s Core Business Processes for Revolutionary Change* (January 22, 2015), 10. <https://apps.washingtonpost.com/g/documents/investigations/the-defense-business-boards-2015-study-on-how-the-pentagon-could-save-125-billion/2236/>

⁴¹ Cost Assessment and Program Evaluation, Office of the Secretary of Defense, *Comparing the Cost of Civilians and Contractors: Performance of Comparable DoD Functions* (April 2017).

https://admin.govexec.com/media/gbc/docs/pdfs_edit/dodcontractorcivilianpart1.pdf and https://admin.govexec.com/media/gbc/docs/pdfs_edit/dodcontractorcivilianpart2.pdf

While there were some promising efforts by the Army to create systems that would help officials make more cost-effective decisions, departmentwide efforts to create similar systems received significant pushback from within the department and eventually stalled.⁴² Congress also exacerbated the problem by reducing what the department must report through the inventories.⁴³

Finally, we need to make sure that taxpayer dollars do not go to risky contractors.⁴⁴ Currently, companies that waste taxpayer funds or defraud the government continue to receive contracts. In 2018, the Department of Defense reported to Congress that it had obligated \$334.3 billion over five years to contractors the government alleged to have defrauded taxpayers.⁴⁵ The government could make more informed decisions about awarding contracts if reporting and transparency of responsibility information were improved.⁴⁶ Chairman Sanders, it is thanks to you that the government's Federal Awardee Performance and Integrity Information System database is public. However, it remains a shadow of what it should be.⁴⁷ As a result, POGO continues to maintain our Federal Contractor Misconduct Database, largely so that government contracting professionals can easily track the publicly available information about risky contractors, and can better identify contractors with clean records.⁴⁸

The department is also vulnerable to corruption because of the opaque nature of beneficial ownership information. Beneficial ownership refers to the person who really owns, controls, and financially benefits from an entity at the point of a company's formation and throughout the

⁴² Scott Amey, "In Carter We Trust?" Project On Government Oversight, March 24, 2015. <https://www.pogo.org/analysis/2015/03/in-carter-we-trust/>; Letter from Project On Government Oversight Executive Director Danielle Brian to Defense Secretary Chuck Hagel about DOD Effort to Kill Beneficial Service Contract Inventory System, November 25, 2014. <https://www.pogo.org/letter/2014/11/pogo-highlights-dod-effort-to-kill-beneficial-service-contract-inventory-system/>

⁴³ Public comment letter from Project On Government Oversight General Counsel Scott Amey about DOD proposed rule, "Defense Federal Acquisition Regulation Supplement: Data Collection and Inventory for Services Contracts (DFARS Case 2018–D063)," August 4, 2020. <https://www.pogo.org/letter/2020/08/pogo-opposes-defense-department-proposed-service-contract-inventory-rule/>; Government Accountability Office, *Service Acquisitions: DOD's Report to Congress Identifies Steps Taken to Improve Management, But Does Not Address Some Key Planning Issues*, GAO-21-267R (February 22, 2021), 3-4. <https://www.gao.gov/assets/gao-21-267r.pdf>; Government Accountability Office, *DOD Contracted Services: Long-Standing Issues Remain about Using Inventory for Management Decisions*, GAO-18-330 (March 29, 2018), 2. <https://www.gao.gov/assets/gao-18-330.pdf>

⁴⁴ Federal Acquisition Regulation Subpart 9.103.

⁴⁵ "The total number of individuals or entities indicted for, settled charges of, been fined by any Federal department or agency for, or have been convicted of procurement fraud, involved 168 contractors. The total number of contract actions is 15,963,513 with a total value of contract obligations equal to \$334,305,246,152. Of the total number of contract actions, 94 percent are from one business entity, while 76 percent of the total contract obligations are from two major defense companies. The remaining 165 contractors accounted for 4 percent of the total contract actions and 24 percent of the total contract obligations." Department of Defense, *Report to Congress: Section 889 of the FY 2018 NDAA Report on Defense Contracting Fraud* (December 2018), 3. <https://fas.org/man/eprint/contract-fraud.pdf>

⁴⁶ *Past performance and suspensions and debarments: Hearing before the Commission on Wartime Contracting* (February 28, 2011) (testimony of Scott Amey, General Counsel of the Project On Government Oversight). <https://www.pogo.org/testimony/2011/02/testimony-of-pogos-scott-amey-on-deficient-contractor-accountability-leaves-agencies-and-taxpayers-at-risk/>

⁴⁷ Matthew Weigelt, "New law puts contractor performance in the public spotlight," *Washington Technology*, August 5, 2010. <https://washingtontechnology.com/articles/2010/08/05/obama-opens-fapiis-to-the-public.aspx>

⁴⁸ Project On Government Oversight, "Federal Contractor Misconduct Database." <https://www.contractormisconduct.org/>

company's existence. Anonymous corporations present corruption risks and can undermine our national security. A 2019 Government Accountability Office report reviewed 32 resolved cases with the Department of Defense in which contractors provided false information about their ownership or corporate structure. Those cases revealed that, in addition to misrepresenting ownership information, the companies had been accused or found guilty of a litany of misdeeds: price gouging; providing poor-quality goods and services; abusing programs intended for small businesses owned by "service-disabled veterans, women, minorities, or economically and socially disadvantaged individuals"; and improperly disseminating sensitive military information.⁴⁹ To combat the risks posed by shell corporations, Congress passed a provision in the National Defense Authorization Act to strengthen public disclosure of beneficial owners, though we think this provision would be even more effective if more contractors were encompassed, if language that only requires disclosure if "practicable" were removed, and if corporations are required to update their beneficial ownership information.⁵⁰

There are a number of steps Congress should take to address the root causes of wasteful and risky defense spending by reforming *how* the Pentagon buys goods and services:

- **Stop the revolving door between the Pentagon and the defense industry.** The importance of the Defense Department's work demands that their decision-making be beyond reproach and free from even the perception of corruption. Right now, senior Pentagon officials only have to wait a short time after leaving service, if at all, before they can go to work for defense contractors or other entities with a financial interest in the department's policies and decisions. Congress should extend the cooling off periods and close loopholes that betray the public's trust. Additionally, Congress should require the department to make public its database of officials who have gone to work for the defense industry.
- **Reform acquisition laws to empower the department to make smart buying decisions.** Preventing overcharges on spare parts begins with returning the definition of commercial items to what it was before 1994: goods or services sold in substantial quantities to the general public. Congress should also restore the Truth in Negotiations Act to require certified cost or pricing data for contracts exceeding \$500,000 where there is not adequate price competition.⁵¹ Especially in a sole-source environment, the department must be able to access certified cost and pricing data that is current, complete, and accurate.

⁴⁹ Government Accountability Office, *Defense Procurement: Ongoing DOD Fraud Risk Assessment Efforts Should Include Contractor Ownership*, GAO-20-106 (November 25, 2019), 23. <https://www.gao.gov/assets/gao-20-106.pdf>; Neil Gordon, "Contractors Use Shell Games to Hide Owners, Cheat Taxpayers," Project On Government Oversight, December 18, 2019. <https://www.pogo.org/analysis/2019/12/contractors-use-shell-games-to-hide-owners-cheat-taxpayers/>

⁵⁰ Section 885, William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283); Tim Stretton, "Defense Bill Includes Two Landmark Transparency Provisions," Project On Government Oversight, January 21, 2021. <https://www.pogo.org/analysis/2021/01/defense-bill-includes-two-landmark-transparency-provisions/>

⁵¹ 10 U.S.C. § 2306a. 41 U.S.C. chapter 3; The current Truth in Negotiations Act threshold is \$2,000,000. "Get Ready: The Truth In Negotiations Threshold is about to Jump to \$2 Million!" Cherry Bekaert, June 15, 2018. <https://www.cbh.com/guide/articles/get-ready-the-truth-in-negotiations-act-threshold-is-about-to-jump-to-2-million/>

- **Increase transparency in and curtail overuse of service contracting.** Congress must require the department to create cost modeling systems that take into consideration all relevant cost data, including administrative costs.⁵² Those systems then must be used by the department when making decisions about whether to contract out services, and the process should include an analysis of whether that service can be performed by existing government resources. The department should also be required to annually provide to the public aggregated data on total costs and contractor full time equivalents. As is already done for most federal employees, contractor inventories should include all information relating to the type and nature of work being performed by service contractor personnel, including compensation and the location where the work is principally conducted.⁵³
- **Enhance the government’s tools to ensure taxpayer dollars only go to responsible contractors.** Awarding contracts to entities that have defrauded the government or violated laws or regulations undermines the public’s confidence in a fair process and exacerbates distrust in our government. It also results in bad deals for the government and undermines effectiveness. Congress should continue to expand the information made available to the public in contractor responsibility databases, including all civil, criminal, and administrative proceedings resulting in the payment of monetary fines, penalties, reimbursement, restitution, damages, or settlements. Protecting the integrity of the system requires both the government and companies to step up. The government must carefully review contractors’ performance and responsibility track records before awarding a contract, and make sure contractor information databases are accurate, up to date, and accessible. Contractors must make timely and accurate reports of all required data fields. Failure to do so must bring consequences.

The importance of the Department of Defense’s mission, along with its significant taxpayer resources, means that it must be a model of efficiency, accountability, and transparency. Without reform of the acquisition system to better protect taxpayers, we will continue to see waste, fraud, and abuse.

Weak Financial Management

The Department of Defense’s inability to pass a financial audit shows how the Pentagon is not held to the same standard of accountability as other federal agencies. The department’s financial management has been on the Government Accountability Office’s High Risk list since 1995,⁵⁴ and that weak management has contributed to problems like the Army’s inability to account for

⁵² *Contractors: How Much Are They Costing the Government?: Hearing before the Senate Homeland Security and Governmental Affairs’ Subcommittee on Government Contracting*, 112th Cong. (March 28, 2012) (testimony of Scott Amey, General Counsel of the Project On Government Oversight). <https://www.pogo.org/testimony/2012/03/pogos-scott-amey-testimony-on-contractors-how-much-are-they-costing-government/>

⁵³ Richard Loeb, *Caveat Emptor* [see note 31].

⁵⁴ Government Accountability Office, *DOD Financial Management*. <https://www.gao.gov/highrisk/dod-financial-management> (accessed May 7, 2021)

trillions in tax dollars.⁵⁵ While the department has improved somewhat over the years, they still do not expect to be able to pass an audit until 2027.⁵⁶

It's also clear that the department's cost forecasting greatly overestimates the department's real needs, as evidenced by the billions of dollars the department has in excess unobligated balances. I want to thank Chairman Sanders for his work on this issue. At your request the Government Accountability Office researched the matter. They found that from fiscal year 2013 to fiscal year 2018 the department returned \$80 billion in canceled funds.⁵⁷ In the last administration, the president used those unobligated balances to pay for programs without congressional approval. POGO, the Friends Committee on National Legislation, and Women's Action for New Directions found the department returned another \$15 billion in fiscal year 2019.⁵⁸ Moreover, it also appears that this money is used as an offset for additions proposed in appropriations bills. We urge the committee to continue to conduct oversight on this issue by requiring the Government Accountability Office to provide annually its estimates of unobligated balances, expired funds, and canceled funds. This information would be extremely helpful in informing priorities and allocation levels for budget resolutions.

Discouraging the Wish List Habit

We also urge the committee to look at how service and command wish lists, referred to as "unfunded priorities" lists, reduce budget discipline and increase wasteful spending. For those unfamiliar with the practice, many components of the Defense Department produce two budgets for Congress: One approved by the department's civilian leaders as part of the annual budget submission, and a second of additional programs that didn't make the cut. When the late Senator John McCain was chair of the Senate Armed Services Committee he criticized this practice as a budget gimmick and a "backdoor way of getting things done."⁵⁹ Unfortunately this practice has only become worse over time, with Congress codifying into law the requirement for components to produce two lists.

An ideal budget process at the Department of Defense or any other federal agency would establish clear priorities for spending and program execution. By telling Department of Defense components they'll have two bites at the apple, Congress is encouraging the already palpable pressure and incentives to increase the department's budget. Congress should eliminate the statutory requirement. In the absence of legislative change, there is another way Congress can address this matter. Prior to this requirement, then-Defense Secretary Robert Gates discouraged

⁵⁵ Department of Defense Inspector General, *Army General Fund Adjustments Not Adequately Documented or Supported*, (July 26, 2016). <https://media.defense.gov/2016/Jul/26/2001714261/-1/-1/1/DODIG-2016-113.pdf>

⁵⁶ Mike Stone, "Pentagon fails audit again, could pass around 2027, comptroller says," Reuters, November 16, 2020. <https://www.reuters.com/article/us-usa-pentagon-auditor/pentagon-fails-audit-yet-again-could-pass-around-2027-comptroller-says-idUSKBN27X03P>

⁵⁷ Tony Bertuca, "DOD draws fire from Sanders for returning \$80 billion in funding," *Inside Defense*, March 6, 2019. <https://insidedefense.com/daily-news/dod-draws-fire-sanders-returning-80b-funding>

⁵⁸ Daniel Spinelli, "Progressives Want Congress to Stop Bailing out the Pentagon During the Pandemic," *Mother Jones*, April 22, 2020. <https://www.motherjones.com/politics/2020/04/progressives-pentagon-defense-department-coronavirus/>

⁵⁹ Marcus Weinberger and Molly O'Toole, "The Pentagon's Weapon Wish Lists Could Disappear," *Defense One*, February 4, 2015. <https://www.defenseone.com/policy/2015/02/pentagons-weapon-wish-lists-could-disappear/104619/>

the practice, which the Army's then-vice chief of staff, General Peter Chiarelli, said encouraged closer scrutiny and a significant reduction in the size and costs of the wish lists.⁶⁰ With the aim of increasing fiscal discipline, Congress should urge Defense Secretary Lloyd Austin III to do the same. This reform was supported by 16 civil society groups from across the political spectrum.⁶¹ Congress should also ask for wish lists to include recommended offsets within the component's own budget to pay for additional projects that did not make it into the budget request. We hope the committee will further impress upon the Secretary the need to curtail this insidious and expensive practice.

Conclusion

To the maximum extent possible there should be a process that encourages the president and Congress to set responsible fiscal goals and make tough choices about priorities. Once those goals and priorities are set, we need to make sure the department has the tools it needs to ensure funds are spent efficiently and responsibly. Thank you again for the opportunity to testify. I am happy to answer any questions you may have.

⁶⁰ Mark Thompson, "Gates Takes Aim at the Military's Spending Wish Lists," *Time*, July 17, 2009. <http://content.time.com/time/nation/article/0,8599,1911152,00.html>

⁶¹ Letter from National Taxpayers Union, Project On Government Oversight, American Friends Service Committee, CODEPINK, Common Defense, Council for a Livable World, FreedomWorks, National Priorities Project, Public Citizen, R Street Institute, Taxpayers for Common Sense, Taxpayers Protection Alliance, Truth in Accounting, the United Methodist Church - General Board of Church and Society, Win Without War, and Women's Action for New Directions (WAND) to Defense Secretary Austin, April 19, 2021. <https://www.ntu.org/library/doclib/2021/04/L21-04-19-NTU-and-POGO-Coalition-Letter-on-DoD-Wish-Lists.pdf>