

Congress of the United States
Washington, DC 20515

May 4, 2021

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Re: Amazon's Possible Anticompetitive Corruption of the JEDI Procurement Process

Dear Attorney General Garland:

We request that the Department of Justice investigate potentially corrupt and anticompetitive conduct by Amazon Web Services, Inc. ("AWS"), a wholly owned subsidiary of Amazon.com, Inc. ("Amazon"), that may have violated federal conflict of interest and antitrust laws. Specifically, we are concerned that Amazon may have attempted to monopolize one or more markets relating to government and/or commercial cloud computing services by improperly influencing the Joint Enterprise Defense Infrastructure procurement process.

On July 26, 2018, the Department of Defense ("DoD") issued Solicitation No. HQ0034-18-R-0077, which sought to award the largest government cloud contract in history to a single contractor. This procurement, known as the Joint Enterprise Defense Infrastructure ("JEDI") cloud procurement, is a single, potential 10 year, \$10 billion Indefinite Delivery Indefinite Quantity contract to provide Infrastructure as a Service (IaaS) and Platform as a Service (PaaS) for DoD to support warfighter operations across the entire Department. Industry experts tell us that cloud computing, which is marked by accelerated growth and rapid technological development, may generate over \$1 trillion in annual revenue globally by 2026.¹

Secure cloud computing services for the United States Government, because of the unique security requirements, is arguably a discrete market within the overall cloud computing space. Winning a long-term, lucrative government cloud computing services contract may also give a competitor an advantage in adjacent commercial cloud computing services markets by funding infrastructure expansion and subsidizing fixed costs over the life of the contract.

¹ <https://www.globenewswire.com/news-release/2021/01/22/2162789/0/en/Global-Cloud-Computing-Market-Size-Share-Will-Reach-USD-1025-9-Billion-by-2026-Facts-Factors.html>

AWS won such a contract from the United States Intelligence Community in 2013, a sole-source deal that catapulted AWS into the top tier of cloud services providers.² In 2020, AWS accounted for 63% of Amazon's profits.³

Amazon's Influence on the JEDI Procurement Process

Amazon appears to have sought to replicate the lucrative nature of its 2013 contract by using inappropriate influence to secure the \$10 billion, 10-year JEDI contract from the DoD in a non-competitive process. Our understanding of the factual record is as follows:

- We are aware that a senior DoD official, Sally Donnelly, who previously performed consulting work for Amazon's cloud computing business, received more than \$1 million in undisclosed payments while serving at the DoD from another Amazon consultant, Andre Pienaar, which she failed to disclose until after she resigned her position at DoD.⁴
- We understand that in January 2017, Ms. Donnelly sold her consulting firm, SBD Advisors, to Mr. Pienaar, who appears to have folded it into another business, C5 Capital, Ltd., which also performed consulting services for Amazon related to cloud services contracts.⁵ We understand that the amount of the sale was \$1.56 million, but that Ms. Donnelly reported only \$390,000 in her financial disclosure statements and made questionable statements directly to government ethics officials regarding the amount of the sale.⁶
- We also understand that SBD Advisors publicly denied—and in fact made statements to the contrary—that Mr. Pienaar was the true purchaser of Ms. Donnelly's ownership interest, which was first disclosed in April 2020 pursuant to an investigation by the DoD Office of the Inspector General ("DoD OIG").⁷ Further entangling the relationships between Ms. Donnelly, Ms. Pienaar, and Amazon, we understand that Pienaar was engaged to and married AWS's Vice President of Worldwide Public Sector Sales, Teresa Carlson, during the relevant time period of the JEDI acquisition.

² <https://www.crn.com/news/cloud/240163382/amazon-wins-600-million-cia-cloud-deal-as-ibm-withdraws-protest.htm>; see also <https://washingtontechnology.com/articles/2020/11/20/intelligence-c2e-cloud-awards.aspx>.

³ <https://www.geekwire.com/2021/amazon-web-services-posts-record-13-5b-profits-2020-andy-jassys-aws-swan-song/>

⁴ See S. Donnelly's OGE Form 278e (May 17, 2017), at <https://www.documentcloud.org/documents/3766126-Donnelly-Sally.html>; S. Donnelly OGE Form 278e (Aug. 30, 2017), at <https://www.documentcloud.org/documents/4637737-Sally-Donnelly-New-Entrant-Report-Final.html>; S. Donnelly, Termination Report (May 3, 2018), at <https://www.documentcloud.org/documents/4637738-Sally-Donnelly-Termination-Report.html>; DOD Office of the Inspector General, "Report on the Joint Enterprise Defense Infrastructure (JEDI) Cloud Procurement" ("DOD OIG Report") (Apr. 13, 2020), at 169, n.144; M. Jeong, Vanity Fair, "Everybody Immediately Knew That It Was For Amazon": Has Bezos Become More Powerful In D.C. Than Trump? (Aug. 13, 2018), at <https://www.vanityfair.com/news/2018/08/has-bezos-become-more-powerful-in-dc-than-trump>.

⁵ See <https://www.businesswire.com/news/home/20180403005624/en/ITC-Secure-Acquires-U.S.-based-SBD-Advisors>; <https://www.vanityfair.com/news/2018/08/has-bezos-become-more-powerful-in-dc-than-trump>.

⁶ See DOD OIG Rep. at 189-194; see also Footnote 4, *supra*.

⁷ See <https://dailycaller.com/2018/08/08/sally-donnelly-defense-department-jedi-cloud-amazon/>; <https://www.bloomberg.com/news/features/2018-12-20/tech-giants-fight-over-10-billion-pentagon-cloud-contract>; see also Footnote 4, *supra*.

- While serving as a senior DoD official and receiving undisclosed payments from Mr. Pienaar—who was being paid by Amazon during the relevant time, it appears that Ms. Donnelly wrote e-mail correspondence to other senior DoD officials commending Jeff Bezos, recommending Amazon’s cloud specifically, and highlighting its security features.⁸
- We also understand that Ms. Donnelly urged, organized, and/or attended at least two private dinners involving Secretary Mattis and Amazon executives and consultants, including Mr. Bezos, Ms. Carlson, and Mr. Pienaar, where DoD’s cloud acquisition was discussed. We understand that two such dinners occurred in London and Washington, DC at various stages of the JEDI cloud acquisition process.⁹
- We understand that another senior DoD official, Anthony DeMartino, who also worked as an Amazon consultant along with Ms. Donnelly at SBD Advisors before serving in the DoD, may have played an integral role in drafting directives regarding the Department’s cloud acquisition strategy, and may have participated in key meetings and events in connection with the DoD’s cloud acquisition—all while under an order from the DoD Standards of Conduct Office to recuse himself from matters involving Amazon.¹⁰
- Finally, we also have concerns that the structure of the contract, particularly the “gating” or restricting criteria, appears to have designed so that only Amazon would qualify. We are aware of one individual, Deap Ubhi, the Lead Project Manager for the JEDI procurement, who may have played an integral role in writing the JEDI Cloud’s requirements with the intention of eliminating competition and ultimately was referred by the DOD OIG to the United States Attorney’s Office for the Eastern District of Virginia for potential criminal prosecution.¹¹ We understand that Mr. Ubhi worked for Amazon prior to his employment at the DoD, was recruited by Amazon while working as JEDI’s Lead Project Manager, and accepted Amazon’s employment offer while working as JEDI’s Lead Project Manager. We understand that neither Amazon nor Mr. Ubhi properly disclosed these employment negotiations to the DoD.¹² We further understand that DOG OIG found that Mr. Ubhi “committed ethical violations when he lied, or failed to disclose information” and that his misconduct violated the FAR and JER.¹³

These actions are alarming for multiple reasons. In addition to obvious procurement integrity issues, there appear to be multiple potential violations of Federal criminal laws that have yet to be investigated in any meaningful way, including potential violations of 18 U.S.C. §§ 203, 205,

⁸ DOD OIG Report, at 177.

⁹ See James Bandler, Anjali Tsui, and Doris Burke, *Fortune* and *ProPublica*, “How Amazon and Silicon Valley Seduced the Pentagon” (Aug. 22, 2019), <https://fortune.com/2019/08/22/amazon-bezos-silicon-valley-pentagon-defense/>; see also DOD OIG Rep. at 173-174, 184-85.

¹⁰ DOD OIG Rep. at 201-06.

¹¹ See DOG OIG Rep. at 152 (“DoD OIG referred evidence of Mr. Ubhi’s false statements to the United States Attorney’s Office for the Eastern District of Virginia (EDVA), as possible false statements in violation of Title 18, U.S.C. § 1001”)

¹² DOD OIG Rep. at 128-152.

¹³ DOD OIG Rep. at 152-157.

and 208 (criminal conflicts of interest); 18 U.S.C. § 201(b)(1) (bribery of a public official); and 18 U.S.C. § 201(b)(2) (acceptance of a bribe by a public official). There also appear to be potential violations of Section 2 of the Sherman Act, 15 U.S.C. § 2, as Amazon, through its conduct, may have attempted and/or conspired to monopolize one or more markets within the cloud services space.

We therefore urge you immediately to open an investigation into the JEDI procurement process and any attempt by Amazon to corrupt the process or harm competition. Please let us know if there are any additional resources you require to prevent irreversible harm to the cloud services market, the warfighter, or the American taxpayer.

Sincerely,



Sen. Mike Lee
Ranking Member
Senate Judiciary Subcommittee on
Competition Policy, Antitrust, and
Consumer Rights



Rep. Ken Buck
Ranking Member
House Judiciary Subcommittee on
Antitrust, Commercial, and
Administrative Law

CC: Sean O'Donnell, Acting Inspector General, Department of Defense
Jeff Bezos, CEO, President, and Chairman, Amazon.com, Inc.