

**PRICE GOUGING IN MILITARY CONTRACTS:
NEW INSPECTOR GENERAL
REPORT EXPOSES EXCESS PROFIT OBTAINED
BY TRANSDIGM GROUP**

HEARING
BEFORE THE
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**PRICE GOUGING IN MILITARY CONTRACTS:
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Wednesday, January 19, 2022

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND REFORM,
Washington, D.C.

The committee met, pursuant to notice, at 10:04 a.m., via Zoom, Hon. Carolyn Maloney [chairwoman of the committee] presiding.

Present: Representatives Maloney, Norton, Cooper, Connolly, Krishnamoorthi, Raskin, Khanna, Mfume, Ocasio-Cortez, Tlaib, Porter, Bush, Brown, Wasserman Schultz, Welch, Johnson, Speier, Kelly, DeSaulnier, Comer, Foxx, Hice, Grothman, Cloud, Gibbs, Higgins, Norman, Sessions, Keller, Clyde, Franklin, LaTurner, Fallon, and Herrell.

Chairwoman MALONEY. [Presiding.] The committee will come to order.

Without objection, the chair is authorized to declare a recess of the committee at any time.

I now recognize myself for an opening statement.

Three years ago, this committee held a hearing to examine a defense contractor who was charging outrageous prices to our military on mission-critical spare parts for aircraft. Democrats and Republicans came together to demand that the company, called TransDigm, repay the excess profits. I was pleased that following the hearing, TransDigm paid back the money, but TransDigm did not change its behavior.

I called this hearing today because the Defense Department's Inspector General recently released a report showing TransDigm is back at it again. The new IG reviewed contracts from more than 100 spare parts and found that TransDigm received \$20.8 million in excess profit. TransDigm's excess profit margins on individual parts range from 68 percent to a whopping 3,850 percent. No company should be making over a \$3,000 profit from American taxpayers, yet the IG found that TransDigm's business model is specifically designed to raise prices on defense contracts. TransDigm identifies companies with specialized sole-source contracts, buys those companies, and then hikes prices on mission-critical parts. Our message to TransDigm today is simple: pay back the money.

Let me give you one recent example. TransDigm manufactures a product called the linear actuating cap, which was used in the Eagle F-15 and C-125 transport aircraft. According to TransDigm,

the part only cost \$189 to make, but the company charged the Defense Department over \$7,000. The IG found that TransDigm repeatedly refused to provide cost data that DOD contracting officers asked for even when it was needed to determine if the price being offered was fair and reasonable. TransDigm forced contracting officers to choose between accepting prices that were blatantly unfair to taxpayers or denying our military the parts it needs to protect our national security. At the same TransDigm is gouging our warfighters, its executives are being rewarded with jaw-dropping compensation. In 2020, TransDigm founder and executive chairman, Nicholas Howley, received more than \$68 million in salary. It would take the average American family around 1,000 years to earn as much as TransDigm's chairman earned in one year while overcharging our military.

Today, TransDigm is going to tell us they did nothing illegal or wrong. I disagree. Overcharging taxpayers, even if you get away with it under the law, is just plain wrong. TransDigm will claim the IG used a flawed methodology to calculate excess profit. This is simply not true. The IG determined that profit above 15 percent was excessive based on information TransDigm provided. According to TransDigm, similar aerospace industry contractors generally have profits ranging from 8 percent to 22 percent. The IG selected 15 percent for its analysis, the middle of that range. What is more, the nearly \$21 million in excess profit the IG identified was based on a sample of only three percent of TransDigm's defense contracts, so the total amount of overcharging may be far higher.

TransDigm wants to deflect responsibility, but we are here today saying enough is enough. Congress must act to empower contracting officers when they are negotiating with greedy contractors like TransDigm. Today I am releasing a discussion draft bill that would require companies to provide cost information when necessary to determine if their proposed prices are unfair and unreasonable. This will enable government contracting officers to ensure the government is paying a fair price. I urge my colleagues on both sides of the aisle to work with me on this reform.

Mr. Howley and Mr. Stein, the last time you both testified before this committee in 2019, you were evasive and refused to provide clear answers to many questions. We expect you to answer our questions today and take responsibility for your company's actions. Most importantly, we expect TransDigm to pay back the outrageous profit it received at the expense of our warfighters and American taxpayers.

Thank you to all of the witnesses testifying today. I am appreciative to Deputy IG Hull for the excellent work of her office. I want to acknowledge Mr. Tenaglia from the Defense Department. I understand the Department's typical practice is not to testify on the same panel as private sector witnesses, and I appreciate you making an exception for this hearing so that we can have the benefit of your perspective, especially given that DOD also participated in the committee's earlier hearing on this issue.

Finally, I ask unanimous consent to submit for the record a statement Senator Chuck Grassley submitted for today's hearing.

Senator Grassley has been a leader in combatting government waste, and his letter highlights the need for Congress and DOD to

address what he calls egregious price gouging by TransDigm and its subsidiaries. Senator Grassley concludes by saying, “We cannot keep shoveling money into a fire, watching as it happens, and pretending that everything is fine. Our tax dollars should go toward supporting the warfighter, not paying thousands of dollars for a simple spare part that costs peanuts to make.”

Without objection, so ordered.

Chairwoman MALONEY. I now recognize the distinguished ranking member, Mr. Comer, for an opening statement.

Mr. COMER. Thank you, Chairwoman Maloney, and thank you to all the witnesses appearing virtually today.

We are again here today to do what committee Democrats do best: ignore the failures of the Biden Administration. This committee steadfastly refuses to conduct meaningful oversight of the Biden Administration. Last week, myself and Whip Steve Scalise sent a letter to Chairwoman Maloney and Chairman Clyburn requesting a hearing into serious issues, including the surge in Omicron, the lack of available testing, President Biden’s declining a plan to order millions of tests, political influence at the CDC and FDA, CDC messaging failures, and President Biden abandoning his National Plan. I don’t need to remind my colleague that more Americans have now died under President Biden than President Trump. These issues don’t even touch on the disastrous withdrawal from Afghanistan, the origins of COVID-19, or the devastating inflation felt nationwide because of Democrats’ out-of-control spending.

Instead of focusing on any of these crises, we are here today to conduct a hearing that already happened. We had this exact same hearing in 2019. Not a similar hearing. The exact same one with almost the exact same witnesses. Now, I know the chairwoman is a big fan of recycling, but recycling hearings is new to me. I agree the government needs to be a good steward of taxpayer dollars, and I agree the Department of Defense should not be forced to pay exorbitant prices. I do not agree with attacking one company that, frankly, followed the law. The Inspector General concluded as much. I can’t remember a company that got hauled in front of Congress for following the law and certainly not twice.

Further, I have serious concerns over the methodology of the report presented today, primarily the arbitrary 15-percent profit ceiling designed by the Inspector General. The IG admits a regulatory or legal profit ceiling does not apply to any of the contracts analyzed in this report. The IG says 15 percent should not be a benchmark for negotiating fixed-price contracts, and the IG does not advocate for a 15-percent profit ceiling for fixed-price contracts, yet that is the standard they determined applied to TransDigm. That is the definition of “arbitrary.” We operate in a free-market economy. Profit ceilings are inherently un-American.

This report does highlight DOD’s struggles with inventory management. So many of these contracts with TransDigm are of low quantity and low value. For some parts, there are even multiple orders for the same part in one year. This is inefficient and, undoubtedly, leads to higher prices. DOD is the largest purchaser in the U.S. and has massive buying power. It can exercise it to avoid some of the issues we see here today. It can consolidate orders to

ensure its negotiating prices once instead of 4 or 5 times per year. It can better leverage IT systems to forecast demand signals to know how many parts it needs to purchase, and it can hold more parts in its inventory to ensure that there is not a last-minute scramble to order more.

All of these changes would be good for the taxpayer and for the warfighter. These are changes we should be focused on, making the government more efficient. What we should not discuss today is placing more burdens on businesses, especially American businesses. Because of the Biden economy, there are worker shortages in every sector. Prices are skyrocketing. The last thing needed is more burden and more regulation. If there are commonsense reforms that can benefit the taxpayer and not unnecessarily burden business or slow down the procurement, we are happy to discuss that.

I hope this hearing will be productive and include questions about how DOD can improve some of these problems. I also hope my colleagues will not resort to shaming one company for what is a systemic issue. There are major issues facing Americans right now. We should be focused on driving down prices, increasing access to COVID tests, therapeutics and treatments, and holding the Biden Administration accountable for a series of failures, not disparaging one company.

I thank you and yield back.

Chairwoman MALONEY. I thank the gentleman for his statement and would like to remind him and other members of the committee that the Subcommittee on the Coronavirus is having a hearing tomorrow on Omicron. We had one on it and the crisis last week, and we can submit for the record a listing of all the hearings we have had on the coronavirus and the reports that we have issued. Also, on Afghanistan, we have held a briefing with the Special Inspector General for Afghanistan. We held a classified briefing at the request of the minority with the Defense Department, State Department, DHS, and intelligence community, and we had one in the National Subcommittee with Chairman Lynch in December. If you would like another one, request it and we will have another one on Afghanistan.

And in terms of the hearing today, we have to take steps to make sure that this abuse does not continue. The Department of Defense and the IG has come forward and said that roughly \$21 million was overcharged by TransDigm, and that when they asked them for fair pricing and for cost transparency, they were not able to achieve it. I have sent you a copy of a letter and also a bill that we have drafted for your review called the Fair Pricing with Cost Transparency Act, which has been written specifically to address this problem of overcharging the warfighter, the Defense Department, and the American taxpayer. That is just an example of one of the areas that we are responding to that we hope the minority will join us in solving this challenge we have.

Now I would like to introduce our witnesses. Our first witness today is Theresa Hull, who is the Deputy Inspector General for the Department of Defense. Then we will hear from John Tenaglia, who is the Acting Principal Deputy Assistant Secretary of Defense for Acquisition and the Principal Director of Defense Pricing and

Contracting at the Department of Defense. Next we will hear from Nicholas Howley, who is the Founder and Executive Chairman of TransDigm. Finally, we will hear from Kevin Stein, who is the CEO of TransDigm.

The witnesses will be unmuted so that we can swear them in.

Please raise your right hand.

Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

[A chorus of ayes.]

Chairwoman MALONEY. OK. Let the record show that the witnesses answered in the affirmative. Thank you.

And without objection, your written statements will be made part of the record.

With that, Ms. Hull, you are now recognized for your testimony.

**STATEMENT OF THERESA S. HULL, DEPUTY INSPECTOR GENERAL,
OFFICE OF INSPECTOR GENERAL, DEPARTMENT OF DEFENSE**

Ms. HULL. Chairwoman Maloney, Ranking Member Comer, and members of the committee, thank you for inviting me to discuss our report on the TransDigm business model and its impact on spare parts pricing. I am Teresa Hull, a Deputy Inspector General at the DOD OIG. I will discuss our longstanding concerns about sole-source procurements, such as those that DOD conducts with TransDigm.

While these concerns are not new, the prices charged by TransDigm provide another clear demonstration of the ongoing problems with negotiating sole-source contracts. Our recent audit examined prices that TransDigm charged the DOD for a sample of 107 spare parts. The issues raised in this audit are not limited to just this company and its contracts with the DOD. Sole-source contractors' unwillingness to share cost data and DOD contracting officers' limited success in negotiating prices for sole-source parts are common findings that we have highlighted for more than 20 years. Our reports have identified the lack of cost data available to DOD contracting officers as the root cause for contractors obtaining excessive profits on sole-source parts. Using certified or uncertified cost data to perform cost analysis are the most reliable ways DOD contracting officers can determine whether a price is fair and reasonable.

The Federal Acquisition Regulation states that "certified cost data is required for contracting officers to award contracts above a certain dollar threshold," which is established by the Truth in Negotiations Act, or TINA. The 2018 National Defense Authorization Act raised the threshold from \$750,000 to \$2 million. Although the intent of raising the threshold was to streamline acquisition process, the increase in the threshold resulted in contracting officers having less information to use during their negotiations with contractors. This had a particularly large impact on negotiations for sole-source items.

TransDigm identified that it was the sole manufacturer for 94 of the 107 spare parts we reviewed. Contractors are required to provide certified cost or pricing data only for contracts valued at or

above the TINA threshold. From January 2017 to June 2019, more than 95 percent of the contracts that the DOD awarded to TransDigm were below the TINA threshold. TransDigm also practices what it calls market-based pricing. According to TransDigm, market-based pricing is a strategy in which a company sets prices of items that it sells based on what customers are willing to pay for the item as opposed to basing prices on the cost to make the spare parts. Often with sole-source parts, the price charged by contractors becomes what the contractor is willing to negotiate and what the DOD is willing to pay for a part to keep an essential weapon system operational.

For our audit, we reviewed 107 spare parts that TransDigm operating units sold to the DOD on 153 contracts with a total value of \$38.3 million. Of those 107 spare parts, we found only two instances in which TransDigm received a profit of 15 percent or less. Using 15 percent, we determined that TransDigm earned \$20.8 million in excess profit on 105 spare parts. Our work on spare parts pricing demonstrates that change is necessary to address the high prices charged by and the excessive profits obtained by contractors like TransDigm that sell sole-source parts to the DOD. Because policies do not compel contractors to provide uncertified cost data for contracts below the TINA threshold when requested, contracting officers are not always able to use cost analysis to determine fair and reasonable prices for sole-source spare parts.

To correct the deficiencies detailed in our TransDigm report, we recommended several actions to DOD. However, these efforts will likely have minimal impact without fundamental regulatory and statutory changes. Without legislative changes, the DOD will continue to be unable to perform adequate price reasonableness determinations, and other price analysis methods are not always effective in identifying excessive prices. Therefore, we support the legislative reforms proposed by the DOD. Without these steps, we believe that the DOD will continue to pay excessive prices for spare parts that it needs.

Thank you for the opportunity to testify this morning, and I look forward to answering your questions.

Chairwoman MALONEY. Thank you. Thank you. Mr. Tenaglia, you are now recognized for your testimony.

STATEMENT OF JOHN TENAGLIA, ACTING PRINCIPAL DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR ACQUISITION, AND PRINCIPAL DIRECTOR, DEFENSE PRICING AND CONTRACTING, DEPARTMENT OF DEFENSE

Mr. TENAGLIA. Thank you. Chairwoman Maloney, Ranking Member Comer, and distinguished members of the Committee on Oversight and Reform, thank you for inviting me to testify today to address DOD's ability to award contracts for military spare parts at reasonable prices. I very much appreciate the work of Ms. Hull and the Inspector General in identifying policy gaps that hinder DOD contracting officers from obtaining the information they need to establish fair and reasonable prices for items they prepare for the warfighter. I thank this committee for continuing its inquiry into this matter and following up on your 2019 hearing.

I am John Tenaglia, the Principal Director of Defense Pricing and Contracting in the Office of the Undersecretary of Defense for Acquisition and Sustainment. I began my civil service career with the Department in 2008 after retiring from the United States Air Force. As the Principal Director of Defense Pricing and Contracting, I am privileged to serve as the functional leader of DOD's contracting and pricing community, and I proudly represent those outstanding professionals today.

DOD's contracting officers seek to award contracts at prices that are fair and reasonable—that is, fair and reasonable to the U.S. taxpayer, fair and reasonable to the Department of Defense, and, yes, fair and reasonable to the companies that we deal with. Ideally, contract pricing is based on competitive market pressures that dictate the boundaries of what is fair and reasonable. In procurement of military spare parts, though, we don't always enjoy the benefit of competitive market forces. On a positive note, the Defense Logistics Agency was successful in awarding 93 percent of its contracting actions and 77 percent of its obligated contract dollars through competitive procedures last year. This includes, but is not limited to, the procurement of consumable spare parts that the military departments need to sustain their fielded weapons systems. However, the Department has significant concerns about our contracting officers' ability to obtain data that is necessary to negotiate fair and reasonable prices, particularly for sole-source items that are asserted by companies as commercial.

As noted in their report, the IG was able to obtain uncertified cost data from TransDigm for nearly all the contracts they examined in their sample. TransDigm declined, however, to provide the same cost data to our contracting officers to support negotiations. The DOD IG's audit report concluded, "Without the necessary legislative changes, the DOD will continue to be unable to perform adequate price reasonableness determinations because contractors are not compelled to provide uncertified cost data." I agree with that conclusion. That is why the Department submitted the legislative proposals that Ms. Hull just mentioned.

Armed with relevant supporting factual data, our contracting officers will negotiate better prices. However, I must clarify. Even where we have obtained data, such as uncertified cost information, our contracting officers will continue to face challenges where they lack negotiation leverage with sole-source contractors who refuse to yield. In my view, there are two overarching issues here. The first, change is needed for contracting officers to obtain the data to analyze and negotiate fair and reasonable prices. The second, though, relates to the business model that the IG's report describes and whether the law should provide a check against the government paying higher prices for contractors to cover their expenses to acquire companies in the supply chain, particularly where the business model precludes effective competition. If unchecked, these expenses will continue to be embedded in contract prices the taxpayers pay for the products that the warfighter must have to perform the mission. The price we pay matters because the more we pay, the less combat capability we can acquire for a ready force.

Since your 2019 hearing on this subject, the DOD has taken action to address these issues and, more generally, to address com-

mercial item pricing. I have detailed those actions in my formal written statement. The Defense Logistics Agency has continued to pursue reverse engineering to create government-owned drawings and technical data packages they are using to establish new sources and to competitively procure parts that were formerly sole-source. While this is an important tool, reverse engineering cannot be used for every problem part.

We in the Office of the Undersecretary of Defense for Acquisition and Sustainment are absolutely committed to delivering and sustaining preeminent capabilities for the warfighter. Our contracting officers' ability to negotiate fair and reasonable prices translates directly to maximizing those capabilities. Thank you for the opportunity to testify today, and I look forward to your questions.

Chairwoman MALONEY. Thank you. Mr. Howley, you are now recognized for your testimony. Mr. Howley.

**STATEMENT OF NICHOLAS HOWLEY, FOUNDER AND
EXECUTIVE CHAIRMAN, TRANSDIGM GROUP INC.**

Mr. HOWLEY. Chairman Maloney, Ranking Member Comer, and distinguished members of the committee, good morning and thank you for the invitation to appear at today's hearing. I'm Nick Howley. I'm Chairman and Founder of the TransDigm Group, and I served as CEO until 2018. Since retiring, I focus much of my time working with the Howley Foundation, a charitable foundation that began in 2003 and focuses exclusively on providing improved educational opportunities for economically disadvantaged inner-city students. As an example, in 2022 alone, we have provided 750 students with scholarships and related support to attend grade schools, high schools, and colleges in addition to funding and managing various other inner-city education programs.

I am here today to speak about the aerospace industry and the work TransDigm businesses do every day to provide highly engineered aircraft components for our commercial and government customers. TransDigm is an American manufacturing company with over 100 manufacturing plants. We provide well-paying jobs to roughly 13,000 individuals, most of whom are in the United States and many of whom are union members. In an era when the domestic supply chain is vulnerable and the government is spending billions to incentivize companies to bring manufacturing back to the United States, our businesses continue to domestically produce quality products that are essential to keeping American strong.

We are primarily a commercial company with well over 90 percent of our revenues going to customers other than the U.S. Government. Our largest customer group is the worldwide commercial airline industry, such as United Airlines or Delta Airlines. Our next largest customers are typically Boeing and Airbus, the leading manufacturers of commercial passenger airplanes. Our companies produce a broad range of engineered aerospace components found in major commercial airlines, including advanced cockpit avionics, cargo handling systems, engine ignition systems, communication software, and antenna systems. Each year we introduce a range of new and improved products primarily for commercial airplanes, but also for defense programs. We typically fund the engineering, test-

ing, tooling, and startup of these products at our own expense. After the September 11th attack, we quickly developed and quickly produced critical cockpit security door systems that protect the aircraft and keep passengers safe. We also manufactured the state-of-the-art parachute and actuators that safely landed and then helped operate the Mars Perseverance Rover. In response to COVID, we are developing antimicrobial and touchless technology for commercial air travel.

The structure of the commercial and defense aerospace industry for our type of components is pretty similar across the world. Airplane manufactures, known as OEMs, like Boeing and Airbus, have suppliers like us compete for the original design and selection of the part. The engineering, tooling, and startup costs are borne by us and we don't always win. Once the supplier is selected after this robust competition, so long as the supplier continues to produce quality products on time, the supplier typically keeps the business. But if the supplier does not provide the customer with adequate value, there is a commercial industry that actively tries to reverse engineer the parts. This generally does not happen to us because we are a good, high-value supplier.

TransDigm is not primarily a defense contractor. Our direct contracts with the DOD represent a small fraction of our revenue. The defense contracts for our businesses are almost exclusively through firm-fixed-price contracts. We rarely have cost-plus contracts where the contractor receives a markup on cost and the government bears all the risk of increased cost. Unlike many traditional defense contractors, we shoulder the risk of delays, cost fluctuations, and other potential losses. We also take the risk that the DOD will elect not to buy from us or will buy in such low quantities that the program is not economically viable. In fact, the report noted 61 of the 107 parts in the audit lacked procurement history data sufficient to perform an analysis. In many cases, DOD went more than five years between procurements. We also work to be good corporate citizens, including supporting the provision of quality, affordable broadband for underserved neighborhoods and establishing college scholarships for minority students interested in engineering and business. I am proud of all that our team has done over the past 30 years and continues to do to make TransDigm a premiere American developer and manufacturer.

My colleague, Kevin Stein, will provide an overview of our company's deep concerns regarding the Inspector General report that is the subject of today's hearing, so I will not reiterate those points. I do want to reiterate TransDigm's dedication to being a partner with the DOD in creating long-term solutions to acquisition industries. As the IG report indicates, TransDigm Group follows all laws and regulations, and we will, of course, continue to do so. We value our work with DOD and we're proud to provide our support.

Thanks for the invitation to appear, and I look forward to questions.

Chairwoman MALONEY. Thank you. Mr. Stein, you are now recognized for your testimony.

**STATEMENT OF KEVIN STEIN, PH.D., CHIEF EXECUTIVE
OFFICER, TRANSDIGM GROUP INC.**

Mr. STEIN. Chairwoman Maloney, Ranking Member Comer, and distinguished members of the committee, thank you for the opportunity to appear today. I am joined by our founder, Nick Howley.

The DOD's inspector general completed an audit last month in which they reviewed firm-fixed-priced contracts awarded to TransDigm businesses. The contracts were from the same general time period as the last audit and predated the 2019 hearing before this committee. During the audit, we engaged in an open exchange with the IG, providing access to thousands of pages of documents, regular meetings, and tours of many of our factories. The IG team even commended us for our cooperation and transparency.

Since the 2019 hearing, we have instituted initiatives to improve communication with DOD. First, we worked with DOD to establish a working group to identify and address acquisition and pricing issues. This has been helpful in addressing various matters over the last two years. Second, we have proactively been providing more information to DOD to facilitate the determination of price reasonableness. We have also proactively been offering volume discounts. Finally, we hired independent experts to train employees on requirements related to DOD contracting. We believe these efforts have improved procurements.

I would now like to turn to the report. We are deeply concerned with the fundamental errors in this report which we communicated to the IG and their counsel. First, we provided complete cost information for the parts reviewed in this audit. However, the IG arbitrarily excluded nearly \$10 million in Federal taxes that we paid and interest paid by us. Remarkably, the report says that the IG's exclusion should not be interpreted to mean that the DOD should exclude interest in taxes in negotiating fixed-price contracts. This is not the only occasion that IG creates arbitrary standards and applies them only to TransDigm and blatantly states that it is doing so.

Second, the report creates a 15-percent profit limit for fixed-price contracts. This limit does not exist in law or policy. The report acknowledges that there are no profit thresholds in the FAR for these kinds of contracts and that they used an inapplicable standard meant for contracts in which the government, not the contractor, takes the risk of overruns. The report itself specifically states, and I quote, "We are not stating that 15 percent should be used as a benchmark when negotiating firm-fixed-priced contracts. We reiterate that nothing in this report states or should be interpreted to mean that the IG advocates a 15-percent profit ceiling or any other specified profit ceiling on fixed-price contracts." So again, the IG expressly acknowledges that the standard they used for this report was unique and should not apply to other DOD contracts.

Third, most of our sales to DOD are for products derived from parts used on commercial aircraft, but the IG failed to acknowledge that the majority of the audited parts have commercial equivalents and that, on average, DOD received a 25-percent discount to the commercial price of those parts. I repeat, on average, DOD received a 25-percent discount, and the IG knew that. The FAR requires DOD to evaluate commercially comparable pricing first and only

then consider cost. The report incorrectly claims that there is no way to evaluate price on sole-source parts. However, most airline parts can be found on multiple platforms and are made by multiple companies even when a part is sole-source on a particular platform. So, DOD can compare our products with others in the market to see that the prices are fair and reasonable. That is exactly what Congress intended with the Federal Acquisition Streamlining Act and subsequent laws.

The question is supposed to be not how much it costs to produce a part, but whether the government is getting a fair and reasonable price. The audit does the opposite in direct conflict with congressional intent. By using these arbitrary standards and ignoring legitimate costs and reams of information we provided in support of price reasonableness, the IG was able to come up with inflammatory profit percentages that make a good headline but ignore basic facts. Further, the report creates these arbitrary standards not for all companies, but only for TransDigm. The report itself contains an extraordinary admission that even the IG doesn't support using these standards for fixed-price contracts.

As a final matter, in our invitation to testify, we were asked whether we will voluntarily pay the amount deemed excessive in the report. Once we receive all of the requests from the DOD, we will evaluate them. We look forward to working with DOD to come to a resolution on this and to establish a plan for going forward. However, we remain deeply concerned with the arbitrary standards used in this report. The policy the IG invented in this report will disincentivize businesses from accepting firm-fixed-price contracts with the government.

Thank you, and I look forward to your questions.

Chairwoman MALONEY. Thank you. I now recognize myself for five minutes for questions.

Ms. Hull, the independent audit report from your office shows that TransDigm is routinely overcharging the Defense Department. Your team analyzed TransDigm's costs to manufacture 106 spare parts and compared that to prices charged to DOD for those same items. You found that TransDigm received excess profits on all one but one of those parts, 105 out of 106 parts. Is that right, Ms. Hull?

Ms. HULL. Thank you, Chairwoman. Yes, that is what we found. We found that TransDigm earned excess profit of \$20.8 million on 105 of the 107 parts that we looked at.

Chairwoman MALONEY. OK. Before us now is a chart with some of the worst examples of excess profit you found in your review. All four of these are examples of excess profits above 500 percent. Two of the parts had profit margins above 2,000 percent. One part has a profit margin of nearly 4,000 percent. Mr. Stein, according to the IG's report, contracting officers requested uncertified cost data for 26 of the spare parts the IG reviewed in order to help them determine whether TransDigm's was fair and reasonable. TransDigm refused to provide the cost data for 24 of those parts, all but two. Is that right?

Mr. STEIN. That is correct.

Chairwoman MALONEY. TransDigm could have provided data on its costs, but the company refused so it could charge outrageous prices. It is simply wrong to do that, to have a 4,000-percent profit

for spare parts that our military needs. The IG recommended that DOD seek repayment of the \$20.8 million in excess profit, and I understand that DOD agreed with that recommendation and has notified TransDigm it is seeking repayment. Mr. Tenaglia, has DOD received a check from TransDigm yet?

Mr. TENAGLIA. Chairwoman Maloney, the Defense Logistics Agency has corresponded with TransDigm and indicated their intent to pursue that refund. The refund has not been received as of yet, but they are working with the company on that matter.

Chairwoman MALONEY. So, Mr. Stein, is TransDigm planning to pay back the full \$20.8 million? "Yes" or "no."

Mr. STEIN. As I said in my opening statements, we think there are significant legal and accounting issues with this report. I can talk about some of those parts that you just had up on the screen. One of those, a quick disconnect coupling, DOD only bought 13 of those over five years. Thirteen pieces. Imagine interrupting a manufacturing company to make a part once in a great while and then expect them to understate their costs or to understate what it is. We are a commercial company. Even on that part that you were referring to, you received a two-percent discount from commercial. You are still getting a discount. It costs us much more to do business with the Federal Government than the DOD, and it does—

Chairwoman MALONEY. Reclaiming—

Mr. STEIN [continuing]. And it does to do business with commercial companies.

Chairwoman MALONEY. Reclaiming my time. If they could have bought it commercially, they would have. I am calling on you right now to pay back the more than \$20 million TransDigm owes taxpayers. In addition to clawing back this taxpayer money, we need to empower contracting officials to prevent companies from manipulating the contract process to obtain excessive profits in the first place. Today I am introducing a draft bill, which I would like everyone to comment on, to require contractors to provide cost data that a contracting officer needs to determine whether prices are fair and reasonable, data that TransDigm refused to provide. Mr. Tenaglia, would having access to cost data help contracting officers ensure that contractors like TransDigm are not overcharging our military?

Mr. TENAGLIA. Yes. I believe access to cost data would give our contracting officers a better chance to negotiate fair and reasonable prices. I do want to comment in addition, as Mr. Stein mentioned, the hierarchy that we use to request information from companies, particularly in sole-source situations for commercial products, could eventually result in our requesting cost information. We do seek to obtain other relevant information, whether it is historical prices paid for commercial parts in the industry. But lacking that relevant information, we will seek contract cost data as a last resort, yes.

Chairwoman MALONEY. And I urge all of my colleagues to co-sponsor this bill and work with us to empower contracting officers to protect taxpayer dollars.

I now recognize the gentlelady from North Carolina. Ms. Foxx, you are now recognized. Virginia Foxx.

Ms. FOXX. Thank you, Madam Chair. I appreciate it, and I appreciate our witness for being here today.

Mr. Tenaglia, the recent DOD Inspector General report states that current statutory and regulatory requirements discourage contracting officers from asking for uncertified cost and pricing data. Why would contracting officers be discouraged from seeking that data?

Mr. TENAGLIA. Thank you, Congresswoman, for that question. They are discouraged because of other means of establishing fair and reasonable prices, including looking at analogous parts. Some of these parts that we are talking about are sold in the commercial aviation industry, and where we can make those analogies on pricing and look at the sales data associated with that part to, let's say, the airlines, then that would be the most relevant point of comparison. That indicates what commercial competitive market forces established that price to be, and so that would be our first priority for looking at that. However, if there are not relevant comparable parts that are being sold in the commercial marketplace, then we might revert to requesting cost information as a means to understand the true price of that product.

Ms. FOXX. I have another question for you. When negotiating a contract for a sole-source part, do contracting officers explore the ability to obtain intellectual property rights? While this may make the initial buy more expensive, do you think it would drive down costs by creating competition in the long run?

Mr. TENAGLIA. For the most part, for the parts we are talking about in the sustainment environment of spare parts that is not typically part of the calculus in terms of the Defense Logistics Agency looking to actually acquire the intellectual property for those parts. Those decisions really are made much earlier in the life cycle of our products. We are examining that. We have a focus right now on competition, as I illustrated in my statement, and part of that involves the effective management of intellectual property at the beginning of a product's life cycle.

Ms. FOXX. I think this is a big loophole that we have here that could save the American taxpayers billions and billions of dollars. And I know how long it takes to look into something, particularly at the DOD, and I want to urge you to move this along because we are spending way too much money because you have signed these sole-source contracts, and other companies could be providing the parts a lot less expensively if you were to get that intellectual property. It is an issue I am very, very familiar with.

I have another question for you. The DOD Inspector General report states that the Defense Logistics Agency is working on an issue to help ensure that DOD receives fair and reasonable prices on spare parts, including an initiative to reverse engineer parts. What advantages does the DOD gain when it reverse engineers a part, and does this increase competition?

Mr. TENAGLIA. Yes, Congresswoman, absolutely. That is the objective, to increase competition by having the government own the technical data package associated with that so we can put it out for competitive bid. There is a limited opportunity for us to do that. Our engineers will assess products that are candidates for reverse engineering and take a look and see what the potential return on

investment might be. But each one of those engineering analyses are backed up with an understanding of how much risk it might be to source that to an alternative supplier. There is a limited capacity for us to do that. We certainly are taking opportunities to do that. I can give you all the details about the TransDigm products, but it is a larger issue for the DLA, the initiative to use companies to help us create those technical data packages so that we can compete the manufactured product.

Ms. FOXX. I have a question for Ms. Hull. The DOD Inspector General report notes that DOD policies do not compel contractors to provide uncertified cost data for contracts below the TINA threshold when requested and encourages the Department to explore alternative contracting strategies when negotiating with a company that sells sole-source parts in small quantities of low dollar values. Could you explain what alternative contracting strategies DOD could utilize to better determine fair and reasonable prices?

Ms. HULL. Yes. One of the alternative contracting strategies that we highlighted in the report was the use of the DPC in coordination with DLA to look at the buys that DOD purchases on the TransDigm contracts. In fact, according to TransDigm officials, DOD buys fewer than 25 spare parts per contract on 60 percent of the TransDigm spare parts sold to the DOD. So, there is an opportunity there to combine the purchases of the parts to potentially get savings for the DOD.

Ms. FOXX. And I want to agree with what the ranking member said at the beginning. I don't think we should be picking on any one company, particularly an American-owned company, here. I think what we need to do is have the DOD be much more open and transparent on the way it does business and, again, save the American people a lot of money. I have one more question for Ms.—

Chairwoman MALONEY. Excuse me. The gentlelady's time has expired.

Ms. FOXX. Thank you. Madam Chair, I can't find the clock here, so thank you very much. I apologize.

Chairwoman MALONEY. All right. OK. Thank you. Thank you for your questions, but it is hard for the DOD to be transparent if they cannot get the information from the contractor, which is what my legislation will do, so I ask you to take a serious look at it. It will have more transparency and, therefore, result in lower prices going forward, so please take a serious look at it.

And I now call on the gentlelady from the District of Columbia. Ms. Norton, you are now recognized. Eleanor Holmes Norton.

Ms. NORTON. Thank you, Madam Chair, and I appreciate this important hearing.

Ms. Hull, when the former chairman, Elijah Cummings, requested that the DOD inspector general conduct an audit of TransDigm's contracts, Senator Chuck Grassley and, and he has been referred to by the chair, joined the request and asked that your audit include a review of TransDigm's business model. The resulting IG order described TransDigm's acquisition strategy as, and here I am quoting, "focused on obtaining businesses that design and manufacture sole-source aerospace components." Your report also noted that these businesses often sell spare parts to the gov-

ernment for older aircrafts. Now, that means that the companies TransDigm acquire are often the only place for DOD to go to buy a spare part needed for an aircraft. Is that correct?

Ms. HULL. Yes. TransDigm's business model focuses on acquiring business units that specialize in highly engineered sole-source spare parts, so that creates a situation in which DOD has one person they can go to for that part, in this case, the TransDigm operating unit.

Ms. NORTON. Thank you very much, Ms. Hull. Now, this question is for Mr. Tenaglia. You mentioned in your written testimony that one method that DOD is using to address concerns related to sole-source items is to encourage contracting officers to escalate to leadership instances whereby they are unable to obtain cost data. How often do contracting officers escalate problems with obtaining cost data from sole-source contracts, and are these escalations ultimately successful?

Mr. TENAGLIA. Thank you for the question. The escalation process that we have established is designed really to put senior leadership attention on the matter, whether it is on the government side here in the Department of Defense, and also on the corporate side, so the open channels of communication we have established with the TransDigm corporate leadership through the working group that I described. We would like it to not get to that point. Ideally, at the working level, our contracting officers can deal with officials in TransDigm or any other company without needing to elevate the matter to a higher level, and what we are talking about is a request for information. The information is not always a request for cost information. It could be a request for other supporting documentation so the contracting officer can establish a fair and reasonable price. And so—

Ms. NORTON. Can you say how often this escalation to leadership occurs and whether it is successful?

Mr. TENAGLIA. It is successful in some cases. How often? So, we have had two reports to the Congress. In the first report to the Congress summarizing the number of instances of elevation last year was 83. This year it went significantly up. We just submitted that report to the Congress last week. I will be happy to provide that to the committee through the appropriate channels. The success of actually resolving the matter is really dependent on individual leaders on both sides, primarily with the company, if we can convince them that we need the information. But we would rather not let it get to the point of elevating to senior levels because we are talking about the heads of contracting activities for the major components of the Department, Defense Logistics Agency, and the military departments. We really need the contracting officers who are empowered and warranted to do their job to get the information they need from companies, not just this company, but any company that we are negotiating with.

Ms. NORTON. Mr. Howley, just in a sample of 107 spare parts included in your audit, TransDigm was the sole-source manufacturer for 94 out of 107 of those parts. Isn't that correct?

Mr. HOWLEY. I am sorry if you are asking me. I am not sure who you are asking. Yes, that is true. We believe, however, that 100 percent of the parts are actually commercial and that we offered

a discount to the commercial price of 25 percent on this entire audited basket of contracts, a 25-percent discount to the available commercial price. This is not gouging. It simply is not.

Chairwoman MALONEY. The gentleman's time and the gentlelady's time has expired.

The gentleman from Georgia, Mr. Hice, is now recognized for five minutes. Mr. Hice.

Mr. HICE. Thank you, Madam Chair. I recall during the hearing on this same topic in 2019 that then I expressed my concern regarding TransDigm's business practices. It appeared clear that the American taxpayers were getting ripped off and that TransDigm should pay back the money. But here we are again going over the exact same situation. Committee Democrats here today are holding this hearing presumably to present themselves as being tough on things like waste, fraud, and abuse, but I find that extremely difficult for anyone with a reasonable mindset to buy into and to believe.

I mean, here today, Democrats are going to hold up TransDigm as though they were some sort of trophy to be exhibited on the wall when literally trillions—trillions—of dollars have gone out the door from the Biden Administration, much of it for dubious so-called COVID relief measures just by itself. For example, unemployment insurance fraud by itself could run into hundreds of billions of dollars. What is this committee doing about it, to address those kinds of concerns? And yet here we are. The Democrats are bringing this company back as an encore, if you will, for practices that, yes, might be unsavory, but certainly not illegal.

And even if the definition itself of "excessive profits" has pretty much has been made up by the inspector general, it is not a matter of regulation, nor is it a matter of statute. This committee has jurisdiction over hundreds of billions of dollars in spending for state, local, and tribal governments through the inflation creation act, that bill which others maybe refer to as the American Rescue Plan. But what has this committee done to look at where that money was spent? Does this committee have any idea what those moneys were spent on and what impact it did or did not have? So, if there is a problem here today, quite frankly, my opinion is that the problem is with the DOD's failure to do a better job forecasting its needs and administering its contracts. These underlying acquisition regulations leave DOD exposed for the kinds of tactics we are here today yet again talking about.

So, with that, Mr. Tenaglia, let me throw one out to you. In the last 18 months, since the last hearing on this same subject, what has DOD done differently to protect the interest of the taxpayers?

Mr. TENAGLIA. Thank you, Congressman. So, since the last hearing, we have taken a number of steps to work with this particular company to refine the process we have with our contracting officers to empower them to request information, to encourage them to request information, not just cost information, but the information that they need. And so there is a training aspect to that. We have a cadre of pricing experts that we have formed across the various components of the Department making sure that they understand this issue. And I would say that this issue presents itself, again, not just with this company, but across the board where we are to

go for commercial items, and all the dollars we are talking about today flow through prime contracts.

My office has purview over looking at the largest negotiations the Department has in the sole-source arena, and in doing so, we focus very intently on the dollars that flow through the subcontracts. And so that is an area of emphasis, again, empowering our contracting officers to know what information they should be requesting. We are really about trying to get the best deal for the taxpayer.

Mr. HICE. So, let me ask you this then. Has the DOD actually improved its ability to forecast its own needs and to avoid these one-off or small-item purchases like we are talking about today?

Mr. TENAGLIA. So, I have had those discussions with the Defense Logistics Agency, and we accept the IG's recommendation for alternative pricing strategies that do include some of the aggregation techniques that the ranking member mentioned. We will be looking at that. It is balanced, however, with the carrying cost of inventory for the parts at DLA, as for many of these parts, they respond to the demand signal of the warfighter who presents the requirements, and DLA is the supplier of those products for the rest of the Department. But there is potential for aggregated buys, and we will look at that as an alternative.

Mr. HICE. So, it is all—

Chairwoman MALONEY. The gentleman's time has expired, and I would like to respond to Mr. Hice. Today we are examining overcharging by a defense contractor. It is true we looked at them in 2019, but they have continued to overcharge millions of dollars, and we are trying to stop it. And this overcharging has cost taxpayers millions, so if my colleagues care about waste, fraud, and abuse, you should care about this hearing, and I hope you will take a serious look and help us with the passage of legislation that will stop it.

I now recognize the gentleman from Virginia, Mr. Connolly. Mr. Connolly, you are recognized.

Mr. HICE. Millions in waste is being ignored, Madam Chair.

Mr. CONNOLLY. Thank you, Madam Chairwoman, and I do find it amazing that my friends on the other side of the aisle all of a sudden become apologists for price gouging and, by anyone's standards, excessive profits, and want to resist the very oversight they claim they want with respect to this Administration and the ongoing COVID crisis. So, I commend the chairwoman for having this hearing and for updating us on what, if any, progress has been achieved in the interim two years since we last had an oversight hearing on this matter.

Ms. Hull, at our last hearing and I believe at this one as well, we talked about cooperation on documentation and the fact that DOD was somewhat hampered by the fact that documentation was not provided by the vendor, in this case TransDigm. Is that still the case that we are not getting documents that have been requested by the contract office in DOD in order to provide some kind of analytical framework for determining a fair and reasonable price?

Ms. HULL. Yes. In our current audit or this past audit, the contracting officers asked for cost information 26 times and only re-

ceived it twice from TransDigm. So, they are still encountering the similar problems.

Mr. CONNOLLY. Dr. Stein, at our last hearing, I asked you about this issue, and you kind of danced around it. Why isn't TransDigm providing the documentation requested by DOD so that both parties can be happy with what could be mutually arrived at, at a fair and reasonable price and a fair and reasonable return on your investment?

Mr. STEIN. Congressman Connolly, I appreciate that question. I feel like I am in a bit of double jeopardy as you audited, we audited, the IG audited the same time period as the last audit, and we audited some of the exact same parts. Why would we expect there to be a different answer? We went back in time and audited the same parts.

Mr. CONNOLLY. Dr. Stein. Dr. Stein, the question is really simple. You just heard Theresa Hull say that out of 26 documentation requests, you only complied with two of them. Why is that? Why not have full transparency and provide the information and documentation that DOD says it needs to determine a fair and reasonable price?

Mr. STEIN. So, of the 154 contracts that were audited, they only asked for that on 26 of them, and we thought at the time, we thought the process, since they are commercial, they have always been commercial, that you should be able to use commercial invoices, so we didn't see the point of giving our critical information up. Now, since the audit—

Mr. CONNOLLY. No, no. Wait. Wait.

Mr. STEIN. OK.

Mr. CONNOLLY. Dr. Stein, unfortunately, this is very time limited—

Mr. STEIN. I know. I understand.

Mr. CONNOLLY. So, you made a conscious decision as a corporation not to comply with a documentation information request from DOD with respect to these pending contracts.

Mr. STEIN. We did provide commercial qualification packages on all of the parts, so everything is commercial. Everything has now been given to the IG. At the time of contracting—

Mr. CONNOLLY. So again, let me just interpret what I am hearing you say. So, you are taking direct issue with Theresa Hull and her assertion that you only complied with two of the 26 requests. You are arguing, well, actually that is technically true, but more broadly, we did comply by allowing that commercial information to be available to you.

Mr. STEIN. That is correct. That is correct.

Mr. CONNOLLY. All right. Theresa Hull, this 15-percent threshold, I think, too many people seems very arbitrary. So, you looked at profit margins in the range of 8 to 22 percent, and you somewhat arbitrarily said 15 is the happy medium for the purpose of our examining not only cost structure, but profit that is extracted from that cost structure. Is that correct?

Ms. HULL. Yes, but the 15 percent, you know, we were asked by the committee to look at the specific date ranges for specific thresholds, and we included all of the spare parts included in that time period.

Mr. CONNOLLY. All right. I get that, but I am trying to just look at how we arrived at 15 because I do think that—I am sorry?

Ms. HULL. The 15 percent, we looked at the cost information that TransDigm provided, and in order to determine a fair and reasonable price, we had to compare it to a benchmark. The 15 percent is not arbitrary. It is within the range of the aerospace companies that practice market-based pricing, which is between 8 and 22 percent. Also, I would like to note that we have over 20 years of spare parts pricing reports that used benchmarks in the range of 13.3 to 18 percent, so that 15 percent falls within that range as well.

Chairwoman MALONEY. Thank you. The gentleman's time has expired.

The gentleman from Wisconsin, Mr. Grothman, is recognized.

Mr. GROTHMAN. Here we are. That was kind of exciting in the background there. Mr. Tenaglia, we are going to ask you a couple questions here. Understanding that procurement in the sole-source environment is difficult and can lead to exploitation, have you or anyone else made efforts to instruct contracting officers to actively look for parts that could meet the requirements that are similar to those produced by sole-source providers?

Mr. TENAGLIA. Yes, Congressman. That part of the market research is undertaken across the Department for commercial items. In this particular instance, we are talking about national stock items that the Defense Logistics Agency is responding to with the requirements of the military departments. Most of those parts are specified whether there is an alternate source or alternate part. That is part of the calculus, but in most cases, there is one particular part and, in many of these cases, one particular manufacturer for the parts that are available. That is a function of the dynamics of the market where only one provider is making that particular item, and if that is the case, then we are into the scenario that we are talking about today: negotiating on a sole-source basis.

Mr. GROTHMAN. Are there any efforts to increase competition in the spare parts space? Can you think of anything we can do?

Mr. TENAGLIA. While reverse engineering is a good example, I want to downplay the extent to which we can use that across the board for every part. We really can't. Each one of those requires the engineering analysis behind it. But ultimately, what we do there is we have the technical data package that we can compete the spare parts once we go through that process.

Mr. GROTHMAN. When procuring an original system, do you consider if any of the parts are sole sourced? Is that a factor?

Mr. TENAGLIA. We certainly do. At the very beginning of any weapon system life cycle, we generally do enjoy competition. Once you get into the sustainment environment, as was described earlier in this hearing, competition is more challenging because companies that have developed these products at the outset have that intellectual property, and then it is up to the Department to either identify alternate sources or reverse engineer in the examples that we have talked about.

Mr. GROTHMAN. OK. Mr. Howley and Mr. Stein, I will ask you a question. Would you say that much of your business with the government is in the aftermarket sustainment space?

Mr. STEIN. Six percent of our business today is directly to the government.

Mr. GROTHMAN. OK. When bidding with an original equipment manufacturer for the original system procurement, do you analyze the potential for aftermarket contracts?

Mr. STEIN. We don't. We look at can we develop and design a part that makes sense. Can we meet the design criteria that the OEM is requiring, and then it is a competitive process? There are many companies involved in bidding. Only one is down selected, and that is a decision made by the OEM, not by us. And that is the nature of these highly engineered, extremely low-volume parts that you end up selling to the DOD.

Mr. GROTHMAN. Is it encouraged that your subsidiaries find contracts that will have larger aftermarket potential?

Mr. STEIN. Well, you know, aftermarket is an important part of our business. We want highly engineered products, and many of those happen to have aftermarket content, so it is not that we are exclusively looking for those. What we don't want are commodities. We want to invest in engineering, new product development. That is what we get excited about, and that is part of our business model.

Mr. GROTHMAN. OK. Can you explain the difference between a proprietary part and one for which you are the sole source?

Mr. STEIN. Well, a proprietary part simply means that you developed it, so here, let me show you examples. Here I have in front of me and hopefully you can see them, I have a Boeing 737 actuator and a B-1 bomber actuator. They are the same. You can't tell the difference in them. The fact that we developed the 737 actuator on our own dime and can transfer that development and technology to the B-1 bomber, and we sell this at a lower price, we give the government a discount to what we charge every other airline in the world, and I have lots of examples. These are pitot tubes. Pitot tubes are what measure air speed. This is a military. This is a commercial. They are identical. There is no difference in those.

This is what we provide, and we show there is a commercial part and we are selling you this commercial part in whatever package you want it, and we are giving it to you at a discount. There is no gouging or overcharge.

Chairwoman MALONEY. The gentleman's time has expired. The gentleman's time has expired.

The gentleman from Maryland, Mr. Raskin, is now recognized.

[No response.]

Chairwoman MALONEY. You need to unmute.

Mr. RASKIN. Thank you very much, Madam Chair, for calling this important hearing, and I just would want to begin by framing this in the historical context. I mean, defense contractor fraud, military fraud goes back to the 19th century. Abraham Lincoln complained about it, which is why we have the qui tam process, but billions and billions of dollars have been ripped off from American taxpayers as established in thousands of criminal cases as well as civil cases reclaiming money for the taxpayers.

Ms. Hull, I want to give you the chance to respond to some of the statements that TransDigm made about the IG report. Mr. Stein said that the IG audit has fundamental legal and accounting

errors, and even the DOD IG doesn't support the standard that was used for TransDigm's audit. How would you respond to those statements?

Ms. HULL. Thank you for the question and the opportunity to respond to the statements made about our report. TransDigm took a lot of those statements out of context. In fact, we performed this audit under generally accepted government auditing principles, which we followed robustly. And, you know, in our report we distinguish in our scope and methodology section exactly what we did, exactly what we looked at. So, for this audit, we applied a 15-percent profit rate based on what we looked at with the cost data I mentioned earlier. It falls within the range of the 13.33 and 18 percent benchmark we have used on over 20 years of auditing the spare parts environment. Also, as far as—

Mr. RASKIN. Let me stop you there for a second. I mean, that is really nitpicking when we are talking about 1,000-percent profit margin in some cases that was made by the contractor here. So, whether you call it 15, 20, or 25 percent, I mean, we are looking at ludicrous hyper-billing of the government, right?

Ms. HULL. Correct. The environment that the Department of Defense has to negotiate in right now with TransDigm is very cumbersome. Because they are a sole source, they have created this sole-source environment, and in a sole-source environment, there aren't competitive market forces. There aren't other alternatives. And Mr. Stein mentioned commercial packages that his company provided to our audit team. I would like to note that in those packages, we did not see like quantities for comparison which would have been a fundamental, you know, consideration for analysis. And also, fundamentally, a contracting officer determines the commerciality, not an audit team and not a government contractor. So, in this case—

[Audio malfunction.]

Mr. STEIN. Uh-oh.

Mr. RASKIN. Well, Madam Chair, I will complete my questioning of her afterwards. Let me go to Mr. Howley. Do you agree with the IG's finding that TransDigm did refuse to provide the cost data in 24 cases when it was requested by the contracting officers?

Mr. HOWLEY. I don't know the specific answer on those 24 parts. What I will say is that almost every one of these parts is a commercial part. The preferred way of doing price analysis here in the FAR is it gives a preferred way of doing it, and the preferred way is to compare it to price data, comparable commercial price data. We submitted the commercial price data and the commercial justification for every product. And, in total, the government is buying at a 25-percent discount to the commercial price, not the commercial price on some price list, but the commercial price that commercial customers are paying. And that is the preferred method of doing this as defined in the regulation, not cost analysis.

Mr. RASKIN. Why would you not provide the cost data in those 24 cases which ended up being exorbitantly overpriced? Why?

Mr. HOWLEY. I will repeat the same thing. The regulations that govern this have a specific methodology by which you determine reasonableness of price, and commercial pricing is a—

Mr. RASKIN. OK. OK.

Mr. HOWLEY [continuing]. Is a preferred method.

Mr. RASKIN. I got you. I got you. So, I mean, essentially——

Mr. HOWLEY. I would also add——

Mr. RASKIN. Well, the——

Mr. HOWLEY [continuing]. I would also add another——

Mr. RASKIN. Forgive me. I will give you a chance in a minute if I have got it. But the point I want to make here is the point some of my colleagues have made which is, well, this is perfectly legal. When they asked you that question, you were under no obligation to answer. So, the question is really the one being posed by the chair: do we need to change that rule for contracts under \$2 million because it looks like a gaping loophole where the contracting officers can try to determine what the cost is. The contractors have no reason to comply with that. They don't, and, of course, the taxpayers get ripped off because of it. I mean, there is that one email saying that turning over the information would make a \$40-to-\$50-million ballpark difference in terms of the profitability of the contract.

So, you know, you guys are operating within the rules as they are written, and I think that that should be an incentive for us to change those rules because it is a rip off of the taxpayers. I yield.

Chairwoman MALONEY. Thank you, Mr. Raskin. Your time has expired.

The gentleman from Texas, Mr. Cloud, is now recognized.

Mr. CLOUD. Thank you, Madam Chair. This, of course, is an important topic. I do find it odd that the same people who have advocated for trillions in wasteful spending over the last year are suddenly fiscal hawks when it comes to this.

This is an important topic, especially, of course, as we are facing new challenges. We need to realize that efficiency has to be a competitive edge for our DOD and a patriotic duty for the companies that we are contracting with of course. My only question in this hearing is why we are only looking at one company and why we are only talking about \$15 to \$20 million when we have trillion-dollar contracts that remain backlogged, wasting billions of dollars. We saw Biden leave \$85 billion in military hardware to a terrorist organization, and today we are talking about \$15 to \$20 million, which is important, but I think it is more of a systemic larger issue when we should be looking at all the issues when it comes to military contracting where that is really wasting billions, not millions. But today we are talking about \$15 to \$20 million.

So, Mr. Tenaglia, can you talk about just-in-time inventory, sole-source contracting? They place DOD in a position of paying more for spare parts and decreasing readiness. These are longstanding issues. Never been fully addressed. What can DOD do to reform the acquisition process?

Mr. TENAGLIA. Thank you, Congressman. So, as I mentioned earlier, part of the calculus in deciding how many of these parts we can buy at any one time is the carrying cost, the inventory cost for DLA to hold that. There is the fiscal pressure to purchase the items that are needed instantaneously, and the warfighter expects DLA to respond and having those on stock. And so that has driven the need to purchase some of the smaller quantities that we have talked about. For the sole-source scenario, I wanted to come back

to Mr. Stein's description of the two parts, and certainly I agree where the part is exactly the same as that as sold in the commercial marketplace, then we have confidence that the fairness of the price that, let's say, the airline paid for that exact same part would be a fair price.

Where we run into difficulties is when we look at these items that are not the same. They are somewhat comparable, but they are more what we call commercial of a type, meaning you can't go out and see that exact same product and understand what the price of it is when it is subjected to competitive market forces.

Mr. GROTHMAN. Ultimately, this has been a longstanding question, but how do we build in incentive within the DOD for bargaining? You know, when you are a contractor and you are negotiating these deals, it seems to me like there is not much incentive to push for the lower price for the American people. You know, businesses are trying to operate in a competitive environment. We would like them each, of course, to keep in mind the overall patriotic goal of what we are trying to produce efficiently, but they are also competing against other companies in that space. How can we better incentivize the DOD contractors to negotiate better in this? I would like to just expand this conversation into contracting because it seems like we constantly put in contracts that never get fulfilled on time or on budget, and we continue to pay them anyway. That is where the billions are being wasted as opposed to what we are talking about today, but if you could address that.

Mr. TENAGLIA. I think competition is the key. We have our men and women who wear the uniform of this country enjoying the weapon systems, and that they really need to have the decisive advantage in any adversary conflict. And so I am proud of the fact that our defense acquisition work force brings and deliver those capabilities to the warfighter. So, there is a lot of cause to look at the positive side of that. If you look at the weapon systems that have been deployed for this Nation, many of those originated through competition and, I think, coming back to that. So, the extent to which we are effective in competing these requirements will be better off for the taxpayers.

Mr. GROTHMAN. Thank you, Chairwoman. I yield back. Thank you.

Chairwoman MALONEY. The gentleman yields back.

The gentleman from California, Mr. Ro Khanna, is recognized for five minutes. Mr. Ro Khanna.

Mr. KHANNA. Thank you, Madam Chair. Thank you for your leadership. I will remind this committee that we had a bipartisan hearing in 2019, and there were calls on both the Democratic and Republican side to have TransDigm reimburse the Federal Government \$16.1 million. They did the right thing then. They must reimburse the government at least \$20.8 million, excess profit finding.

Let me start with Ms. Hull. Do you agree that that is the least TransDigm can do in reimbursing the government for that?

Ms. HULL. Thank you. Thank you for the question. I stand by our report that the \$20.8 million that TransDigm earned, excess profits on the 105 spare parts, should be refunded to the government.

Mr. KHANNA. I mean, it would be unconscionable, in my view, for them not to do that given that they admitted their error last time.

I hope they will. Let me ask you, Inspector General Glenn Fine said when he was before us in 2019, “We ought to look to the legislative structure to require companies to provide cost information when asked by contracting officers.” Basically, if the DOD wants to buy something and asks the company for the cost, they should be required to do so. Do you agree, Ms. Hull, that companies like TransDigm should be required to provide uncertified cost data when the contracting officer deems it necessary?

Ms. HULL. Yes. I agree that when a contracting officer is unable to determine a fair and reasonable price and asks a contractor, especially in a sole-source environment, they should obtain the data that they request.

Mr. KHANNA. Mr. Tenaglia, if contracting officers could require contractors like TransDigm to provide uncertified cost data, would that empower our government or the Pentagon to make better buying decisions?

Mr. TENAGLIA. Yes, I believe it would, and central to that is the judgment that our contracting officers exercise in getting to the point where they have decided that that is necessary to establish fair and reasonable pricing using the hierarchy of other means that have established that price.

Mr. KHANNA. Thank you. Madam Chair, I ask for unanimous consent to place in the record the written testimony from Mandy Smithberger, director of the Project of Government Oversight.

Chairwoman MALONEY. Without objection.

Mr. KHANNA. She wrote, “It is time for Congress to stop enabling contractor overpricing.” The problems identified by this watchdog report and other reports are only the tip of the iceberg, but the solutions are clear. They can only be fixed if Congress gets serious and takes action. Madam Chair, you have gotten serious. You are taking action with the bill, The Fair Pricing with Cost Transparency Act that would require contractors to provide uncertified cost information. I am joining you in supporting that. I hope everyone on the committee will. Mr. Tenaglia, this bill is based on the legislative proposal from the DOD, so I assume you would support changing the law for DOD contractors. Is that right?

Mr. TENAGLIA. Yes, Congressman. I look forward to working with your committee and understanding how that legislation would help us.

Mr. KHANNA. Mr. Howley, the last time you came before the committee, you denied, you obfuscated, et cetera. I said you are going to end up paying the \$16.1 million. You disagreed. You went back. People told you pay the \$16.1 million. You want to skip those steps and just tell us today that you are going to pay the \$20.8 million?

[No response.]

Voice. Nick?

Mr. HOWLEY. I apologize. I apologize. I have to unmute. I think I am unmuted now. Let me start by saying we are primarily a commercial company. The Department of Defense, though, is not our largest customer by a fair amount, but they are an important customer.

Mr. KHANNA. Mr. Howley, no.

Mr. HOWLEY. The last thing we want——

Mr. KHANNA. I don't want to be disrespectful. It is a simple question. Are you going to pay it or are you not going to pay it? You know, it is a simple "yes" or "no."

Mr. HOWLEY. You asked the question and I will attempt to answer it. The last thing we want, we do not like an unhappy, antagonized customer. What we want to do is we want to get to the bottom of the facts so that everyone understands the facts clearly, at which point we can see what kind of resolution we can have here. We cannot go forward with an assertion—

Mr. KHANNA. Well, I will take that as "yes." I will take that as a "yes."

Mr. HOWLEY. You can take it as a—

Mr. KHANNA. My time has expired.

Mr. HOWLEY. You can take that incorrectly as a "yes." We cannot go forward without the facts being clearly stated and clearly understood.

Mr. SESSIONS. Madam Chairman?

Mr. KHANNA. That is unfortunate. I thought you were going to do it. My prediction is you will do it. It would be better for you to just say here you are going to do it.

Mr. SESSIONS. Madam Chairwoman, point of parliamentary inquiry.

Chairwoman MALONEY. The gentleman's time has expired. And what is your point, Mr. Sessions?

Mr. SESSIONS. My point would be, is this a negotiation with the company or a hearing?

Voice. No, that is not a parliamentary inquiry.

Chairwoman MALONEY. That is not a parliamentary inquiry.

I now recognize from Ohio, Mr. Gibbs. You are now recognized.

Mr. GIBBS. Thank you, Madam Chair. To Ms. Hull, just to be clear, you found that TransDigm did not violate any law or policy in your audit, correct? It is a "yes" or "no."

Ms. HULL. Yes, we did not determine they did anything illegally.

Mr. GIBBS. OK. And that the government, you found that these prices were fair and reasonable and yet they entered into the contracts? I guess my thought here is these are firm-fixed-price contracts, and it sounds like we are negotiating the contract after the contract has been fulfilled. What kind of negotiation happens before the contract is signed by both parties? So, I guess for the first question, I will go to Dr. Stein. Has anybody at TransDigm ever walked away from a negotiation or contract or has the Department of Defense walked away? You know, what has happened here because it sounds like we are negotiating after the fact.

Mr. STEIN. I am not aware of any anything that anyone has walked away on. What I will say is that since the last audit and the last hearing, we have implemented quite a bit of changes ourselves in how we interact with the DOD. We now offer volume discounts on all spare parts pricing to try and get around this. We have voluntarily provided cost data. We are providing more information than we ever have before. None of that was captured in this audit because, again, this audit, it is like double jeopardy. They are auditing the same timeframe again. What we know is that we offered a discount to commercial, and we do not agree with the artificial, arbitrary profit limits.

Mr. GIBBS. I think, too, Dr. Stein, and you can respond to this, it seems to me if I was a manufacturer, and, of course, 94 percent of my business was the commercial market, only six percent to the DOD, and I have got my manufacturing lines going, and all of a sudden they want a contract for a specialty single-source item or a special item, a specific item, and then you have to shut down some of your operation to make that, you know, it is difficult to figure the cost because you have got lost revenues from the production where you shut down. Is that correct?

Mr. STEIN. That is correct. Often what happens is that we see orders, and then a couple days later even you might get another order with no forecast, no notification of what is happening. You could clearly have manufactured differently if the DOD was buying in some reasonable lot quantity. Many of the parts, including in this audit, 61 of the 107 spare parts evaluated do not have enough procurement history data to even perform an analysis. So, if you are not buying something but once every 5, 10 years, can you imagine what you have to go through from an engineering point of view to figure out how to make that part again so that it passes all the criteria that the warfighter deserves to keep them alive? It is nonsense almost.

Mr. GIBBS. Well, if these were cost-plus contracts, I can understand having negotiations over what your costs are. But since they are not—it is a contract that you agreed on before you even started making the product—both sides have to honor their contract, which you did, and so now to come back after the fact, it seems to be a problem. I don't quite understand how that works, and then I think it is very difficult to put in what your true cost might be when you had to—

Mr. STEIN. That is true, and often we see inflationary pressures that are out of control. For a product we make in our South Carolina facility, a gen engine igniter, a critical raw material over a three-month period went up over 300 percent. If we had agreed to that contract beforehand, we have no ability to get more money back out of the DOD because of that. We take it on risk.

Mr. GIBBS. So, on this 15 percent, the figure that the IG put in for profit margin, is that applied to all similar companies for these types of fixed-price contracts?

Mr. STEIN. Not that we are aware of, no. We believe we are the only company being targeted in this way.

Mr. GIBBS. OK. So yes, I just think there are huge issues here, how you calculate your costs, and if you both agree on it, that is an issue. You just move on forward, and you could walk away from this business if you wanted to, right, and they have to find the part somewhere else. We talk about single source. That is kind of, you know—

Mr. STEIN. It is strange in this because if TransDigm disappeared, the planes would keep flying. They would find another source.

Mr. GIBBS. OK. Well, my time is up, but thank you for what you do for making the country safe.

Mr. STEIN. Thank you.

Mr. GIBBS. Thank you.

Chairwoman MALONEY. Thank you. The gentlewoman from Florida, Ms. Wasserman Schultz, is now recognized.

Ms. WASSERMAN SCHULTZ. Thank you, Madam Chair. Madam Chair, I serve as Chair of the Military Construction, Veterans Affairs, and Related Agencies Appropriations Committee, and our committee is committed to protecting our service members and improving their quality of life. We have pushed to improve atrocious housing standards, build childcare development centers, and address PFAS contamination. While we have made great strides in these areas, there is much more that must be done to meet our obligations to care for not only those who wear the uniform, but also for their families. The challenges our troops face already make it all the more reprehensible that TransDigm would choose to fleece the American taxpayer and overcharge the Department of Defense for critical products.

TransDigm supplies DOD with spare parts for Black Hawk helicopters, F-16s, and F-35s. Our military is using those planes and helicopters in operations all over the world, and the spare parts that TransDigm supplies are critical to keeping those planes and helicopters flying safely. In an email that I have here obtained by the committee, a sales director of AeroControlex, a TransDigm subsidiary, emphasized several talking points for employees to use when responding to DOD requests for cost and price data. The email says that when communicating with contracting officers, employees should be clear that the company is “offering this as a solution to support the warfighter” and that you “welcome all opportunities to support the government to economically procure goods to support the troops.”

Mr. Stein, the IG found that TransDigm’s excess profits were more than 500 percent for dozens of spare parts sold to DOD. Do you actually consider charging DOD prices that give TransDigm a profit of more than 500 percent to be economical for the government?

Mr. STEIN. You know, when we look at these contracts, we lost money on nine of the contracts audited by the IG. You are cherry picking a single part here or there that has extremely low volume on it. Some of these parts were only——

Ms. WASSERMAN SCHULTZ. No, no, no, no. Reclaiming my time. I am sorry.

Mr. STEIN [continuing]. Part at a time, and, therefore, this is not——

Ms. WASSERMAN SCHULTZ. I am sorry. Madam Chair, reclaiming my time. There is no reasonable benchmark that would justify the profits TransDigm obtained. You don’t get to charge 500 percent more for parts on one part of the contract because you lost money on another part. There were more than a dozen instances where your profits were more than 500 percent.

Mr. STEIN. Well, we——

Ms. WASSERMAN SCHULTZ. That is just outrageous and unconscionable.

Mr. STEIN. We object to the calculation of 500-percent profit. It is not an SEC calculation that is being——

Ms. WASSERMAN SCHULTZ. Reclaiming my time. Reclaiming my time. It is very clear the IG was correct that that was the percent-

age of profit, and that is an outrage. Ms. Hull, the IG's review is limited to a small sample of approximately three percent of TransDigm's contracts, yet still identified \$20.8 million in excess profit. Wouldn't you agree that in all likelihood, the total amount of excess profit could be tens of millions more?

Ms. HULL. Thank you for the question, and we looked at the specific dollar value thresholds and the time period that was requested by the committee, and we found, again, that TransDigm earned an excess profit of at least \$20.8 million. There were other contracts that we did not include in this review, so it is possible that that number could be greater than \$20.8 million.

Ms. WASSERMAN SCHULTZ. OK. Thank you. Now, let me close, Madam Chair, with a statement from a former director of TransDigm subsidiary. They told the committee that when TransDigm acquired their company, "It was disheartening since I had tried to do the right thing for the warfighter my whole career." Mr. Stein and Mr. Howley, I believe it is morally wrong for TransDigm to take advantage of our military in a time of need or any time, and I expect you to repay the \$20.8 dollars. To me, you should be barred from future contracts for this greed and deception, and if you really cared about the troops, you would provide full cost data to the military when requested, not talking points to try to obfuscate what your true cost is. It is imperative that they know when you are trying to rip them off.

Thank you, Madam Chair. I yield back the balance of my time.

Chairwoman MALONEY. Yes, I thank the gentlelady for her questioning, and I would just like to clarify with Mr. Stein, building on her question. The Inspector General selected contracts awarded from 2017 through 2019 within a certain dollar amount. And I would be very happy to request a review of all of TransDigm's contracts if that is what you are requesting. So, I am going to ask you, are you requesting that? Would you like all TransDigm's contracts to be reviewed for excess profits with the government? "Yes" or "no."

Mr. STEIN. Of course not.

Chairwoman MALONEY. OK.

Mr. STEIN. We have made incredible progress—

Chairwoman MALONEY. Reclaiming my time.

Mr. STEIN [continuing]. Working with the DOD.

Chairwoman MALONEY. Reclaiming my time. Reclaiming my time.

The gentleman from South Carolina, Mr. Norman, is recognized for five minutes.

Mr. NORMAN. Thank you. Thank you, Mrs. Maloney. I appreciate you holding this hearing. I still find this astounding that we are going after a company that has employed Americans, it pays American taxes. We are taking time that we could be devoting to, I think as Mr. Hice said, trillions of dollars that have been wasted by this Administration. Where is the hearing on the \$80 billion that was left in Afghanistan? Where is a hearing on the \$420,000 per illegal that was proposed? Where is a hearing on having those testify that looted and destroyed over 500 of our nice cities? Where is the hearing on the Medicaid and Medicare fraud and abuse? It is not here.

We are picking on an American company that, again, employs Americans, pays American taxes.

And let me try to understand, Ms. Hull, your decision to exclude taxes and interest from your cost calculations. Can you explain why that was made?

Ms. HULL. When we received the cost data from TransDigm, FAR 31 applied, and within that specific section of the FAR, it talks to excluding interest and taxes when cost information is being used. So, that is why we removed those costs from our calculations.

Mr. NORMAN. Was this made for similar companies providing materials that you went over and got information from?

Ms. HULL. Well, for this particular situation, we are talking about TransDigm, but we do have other reports in which we have looked at cost information and had to make similar decisions based on information provided.

Mr. NORMAN. OK. And you are aware that TransDigm does not have to provide this. It is only six percent of their income. Do you blame them for being a sole provider?

Ms. HULL. In our report, we highlight the risk to the government when they negotiate in sole-source environments. So, TransDigm being a sole-source company and there being no other competitive forces at play are really the issue here for why the Department of Defense is unable to get better pricing. And when the environment is completely sole source for the parts that we looked at, there really isn't a lot of options for the government. So yes, you are correct that TransDigm did not have to provide us the cost information, and they willingly provided it to the audit team to be able to calculate a fair and reasonable price.

Mr. NORMAN. Mr. Tenaglia, can you explain to me again about the sole source? Have you made any efforts to try and increase competition? That is certainly not TransDigm's issue, is it?

Mr. TENAGLIA. No, Congressman, I don't think that is necessarily an issue for TransDigm to take up. There are a significant amount of transactions that we execute with TransDigm that have been coded as commercial and competitive. We do have initiatives underway to increase the extent to which we are able to compete these things. We have talked about some of those activities, such as the reverse engineering that gives us the ability to compete the manufacturing of those parts where we have situations such as these.

Mr. NORMAN. But that is the government's responsibility.

Mr. TENAGLIA. Yes.

Mr. NORMAN. If you want to go after another company that makes something that is now made by one company that is your responsibility.

Mr. TENAGLIA. Yes.

Mr. NORMAN. But here you are, you know, investigating one company. Again, it still amazes me you are excluding taxes and interest when anybody that has been in the private sector, you have to put that in before you price anything, whether it is a house, whether it is a car, or whatever. The 15 percent, again, is staggering to me as to why that is that there. Mr. Howley and Mr. Stein, would you say that much of your business with the government is in the aftermarket sustainment space?

Mr. STEIN. This piece that we are talking about right now, that is six percent of our direct sales is direct and is these spare parts.

Mr. NORMAN. Well, let me just say in closing that, you know, here we are again, you know, majoring in the minor when it takes an American company and ignoring everything else this Administration is doing that is costing taxpayers so much more than this. You are a private company that, again, is employing Americans for their livelihood. You are paying taxes that support our law enforcement, our police, and it looks to me like that you have done everything you have been asked to do. So, Madam Chair, I yield back.

Chairwoman MALONEY. The gentleman yields back.

The gentlelady from California, Ms. Porter, is now recognized.

Ms. PORTER. Hello. Thank you. Mr. Howley, has TransDigm ever trained staff to provide “the minimum amount of information to the government?”

Mr. HOWLEY. TransDigm regularly trains the staff and brings in outside consultants and lawyers.

Ms. PORTER. Reclaiming my time, Mr. Howley. Reclaiming my time, sir. I am sure you do all kinds of training. I am asking a specific question and I am going to repeat it. Has TransDigm ever trained staff to provide “the minimum amount of information to the government?”

Mr. HOWLEY. I don’t know the answer to that. What I know is we regularly train people in all the regulations required to deal with the government, and we insist they comply with them.

Ms. PORTER. OK. You have told people to provide the minimum amount of information. Have you ever told staff that it is wrong to charge taxpayers lower unit prices on higher-volume orders? In other words, we all know when we buy in bulk on Amazon it is cheaper per unit. Has TransDigm ever told its employees that it is wrong to charge taxpayers lower per-unit prices on higher-volume orders?

Mr. HOWLEY. Not that I have knowledge of or recall.

Ms. PORTER. OK. Mr. Howley, what I am introducing here is an exhibit, TDG00034189. It is displayed on the screen so you can see it. “More volume equals lower price.” What does it say in big purple all-cap letters? Can you read that for me?

Mr. HOWLEY. The word is “wrong.”

Ms. PORTER. “Wrong.” So, would you like to modify your answer? In light of seeing this exhibit, and I have seen this exhibit, has TransDigm ever told its staff that it is wrong to charge taxpayers lower per-unit prices on higher-volume orders?

Mr. HOWLEY. I don’t know what that is. I suspect it is out of context somewhere. I suspect it is something done by one of our—

Ms. PORTER. Mr. Howley—

Mr. HOWLEY [continuing]. One of our operating businesses at one time. I simply don’t know.

Ms. PORTER. Well, Mr. Howley, for \$68 million a year, you need to know what is going on in your company. That is your annual salary in your retirement. In your retirement. Has TransDigm or its subsidiaries ever refused to provide price data to the military when it has requested it?

Mr. HOWLEY. I don’t know the answer to that whether they ever have. I do know—

Ms. PORTER. Mr. Howley.

Mr. HOWLEY. I do know—

Ms. PORTER. Mr. Howley.

Mr. HOWLEY [continuing]. That we regularly provide price data, and, in fact, provided commercial price data for, I believe, every part in this audit.

Ms. PORTER. Mr. Howley, I just want to remind you that you are under oath as you are giving this testimony. Do you recognize these words, “We didn’t have to give up a dime. I am just full of B.S., and they took the bait?”

Mr. HOWLEY. I don’t have knowledge or recall it.

Ms. PORTER. OK. That is from a TransDigm exhibit. You don’t need to see it, but that is from an exhibit in this investigation. That is your salespeople talking about a deal that they just made with the military for jet engine parts in 2018. “We don’t have to give up a dime.” Your salesperson said, “I am just full of B.S., and they”—being the DOD and taxpayers—“took the bait.” Mr. Howley, does TransDigm have a code of business ethics and conduct?

Mr. HOWLEY. Oh, as any company does. Of course we do. It is on our website.

Ms. PORTER. OK. Does that code require fair dealing?

Mr. HOWLEY. Yes, and it says what it is, but of course it requires fair dealing.

Ms. PORTER. Do you think it is fair dealing to be full of bullshit and get the taxpayers to take the bait?

Mr. HOWLEY. I don’t have a comment on that. I am not familiar with the situation. I don’t know what it is. I don’t know who the person is. I just can’t comment on it.

Ms. PORTER. Mr. Howley, will you find out who that person is?

Mr. HOWLEY. I presume you have it. You have an email. I presume you have who it is. I don’t know who it is. I don’t—

Ms. PORTER. Mr. Howley, as executive chair of the board being paid \$68 million when a typical board member of a Fortune 100 company receives \$319,000. Here is the typical board member of Fortune 100 companies. See this flat line? You can’t even see it. Here is you. For \$68 million, you need to enforce your company’s code of business ethics.

Chairwoman MALONEY. The gentlelady’s time has expired. Ms. Porter, your time has expired.

The gentleman from Texas, Mr. Sessions, you are now recognized.

Ms. SESSIONS. Madam Chairwoman, thank you very much. The questions that I would like to go down really involve this conversation that the IG has engaged in about this percentage of over earning the \$20.8 million they are being berated today to pay back. I thought this was a hearing, not a negotiation, and I am disappointed that we are going down that track.

So, Mr. Tenaglia—I am sorry—John, how do you pronounce your last name?

Mr. TENAGLIA. “Ti-NAY-glee-uh.”

Mr. SESSIONS. Mr. Tenaglia, the number that is used and that the IG used, the \$20.8, does that take into account a net of working against taxes they would have paid, or is that just the total amount of money that you see?

Mr. TENAGLIA. So, the IG's use of the 15 percent really is an after-the-fact way of looking at how things played out. The way we normally negotiate contracts on the front end, we prospectively price. Let's say it was a non-commercial part and we had the use of the record of weighted guidelines. That gives our contracting officers some structured approach to arrive at an objective profit amount. It is all subject to negotiation. I don't disagree with the methodology the IG used here.

Mr. SESSIONS. Yes, sir. So, in other words, forget the percent, the amount. So, they just went in and applied their own perspective that is not related to the law. As she said, it is anywhere from 8 to 24 percent. She just applied 15 percent to the entire profit?

Mr. TENAGLIA. So, I think that was trying to portray the mark-up beyond the amount of costs that were incurred to produce the item.

Mr. SESSIONS. OK. Let's go back and talk for a second about what is available in the marketplace. There has been discussion about the market value, the marketplace, and then the two-percent discount that was applied. Were there others available that someone could have gone to to get the same parts that they wanted?

Mr. TENAGLIA. So, I would have to look at each one of those parts. But as I was describing earlier, in those instances where we have a manufacturer or a seller-contractor presenting us a part that is sold in the marketplace, that exact same part, then our policy and our training is to respect the fact that the going price that another commercial customer paid for that is what the market would bear. What is different in most of these circumstances is that same part is not necessarily sold to other commercial customers. They are of a type, meaning there is some variation of that same part, and then it becomes the analysis of what is the difference in the functionality of that part versus the part that is sold in the marketplace.

Mr. SESSIONS. OK. So, if there is a generally accepted value, and you ask for the parts and they gave you a discount, why would someone assume that they are gouging someone as the majority is attempting to claim today? If you go and buy gasoline at the marketplace and you know it is \$2.68, and you know it is \$2.62, and you buy it for \$2.65 somewhere in that marketplace, why would you even have an investigation about how much money you made when that is the marketplace?

Mr. TENAGLIA. Sir, I think for that analogy, for gasoline, it is essentially the same gasoline that all consumers that are purchasing that. In this case, these are specialized parts that may be of a type.

Mr. SESSIONS. They are, but my point is that they were well within the norm of what would be paid for, and they still gave a discount. Is that disingenuous to give a discount off that to get the business? If the going price is X and you make it X minus two percent, why do you set yourself up for being accused of gouging the government? This makes no sense to me.

Mr. TENAGLIA. Sir, I would just say the starting point for the analysis for a contracting officer is to take a look at whatever the contractor has identified as what they are selling on the commercial marketplace. If they are selling us the exact same product, then that contracting officer will look at the sales price that that

company has got in the commercial marketplace. If it is something different, there is a different analysis that needs to be undertaken.

Mr. SESSIONS. And then——

Chairwoman MALONEY. The gentleman's time has expired.

The gentlewoman from Illinois, Ms. Kelly, is now recognized.

Ms. KELLY. Thank you, Madam Chair. Ms. Hull, thank you for your reports on TransDigm's price gouging. Your recent report identifies astounding levels of excess profits. For example, TransDigm sells a part called the plain encased seal that is used on the B-22 Osprey aircraft. You should see a picture of it in the room. According to TransDigm's own data, it costs \$125 to make the seal, but they charge DOD more than \$1,600, which translates to an excess profit of more than 1,000 percent. I would like to show a picture of this part and a chart of TransDigm's excess profits, so you should be able to see that. Ms. Hull, would you characterize DOD paying a contractor over 1,000 percent profit as government waste?

[No response.]

Ms. KELLY. Ms. Hull.

[No response.]

Ms. KELLY. Ms. Hull?

[No response.]

Ms. KELLY. I will just move on. Mr. Tenaglia, an analysis released last week by the Project on Government Oversight said, "Nearly \$21 million in excess company profits may not sound like a lot in the context of \$768 billion defense budget, but those overcharges add up to a lot of waste and undermine the readiness of our forces as maintaining our existing weapon systems becomes increasingly costly." Do you agree with that analysis?

Mr. TENAGLIA. Well, I certainly agree with the point that, you know, the more we pay unnecessarily, the less capability we can deliver. And so it is the responsibility of our contracting officers to negotiate the best price they can, a price that is fair to industry and that is fair to the taxpayer and the Department.

Ms. KELLY. And TransDigm is the sole-source contractor for the B-22 Osprey plain encased seal, which means that the Department of Defense had to buy this part from you or go without it. Isn't that correct?

Mr. TENAGLIA. That is my understanding, and perhaps this is one of the parts that will be a good candidate for reverse engineering.

Ms. KELLY. Mr. Howley, do you think it is fair for taxpayers to pay over \$1,600 for a part that cost TransDigm \$125 to make?

Mr. HOWLEY. I think there are some regulations that define how you determine the pricing, and the preferred way to do it is to compare it to the comparable commercial price, and I believe this price is discounted to that. I also believe that when the contract is placed, the government has the right to declare a price fair and reasonable or not fair and reasonable, and that has some other name, I don't recall. All these contracts were declared fair and reasonable at the time of placement, and they all have commercially comparable pricing.

Ms. KELLY. Well, that is why we are having this hearing. In my opinion, taxpayers should not be significantly overpaying for parts

the military needs to keep planes flying. Ms. Hull, your audit addressed how the DOD can implement administrative reforms, such as reducing the Agency's reliance on sole-source search manufacturers. Can you elaborate on this?

Ms. HULL. Thank you. The Department proposed a couple of legislative reforms in the last cycle. My understanding and hearing today is that they have some plans for additional proposals for the current legislative cycle. Now, from a sole-source environment, the only other options that the Department has is to pursue some of those that Mr. Tenaglia outlined to include reverse engineering. There is a strategic supplier alliance in which DLA is looking to original equipment manufacturers to potentially cancel their licenses with TransDigm and produce the parts directly for the government. So, while there are options there currently in play, more legislative and regulatory reform would be needed to address the systemic issue.

Chairwoman MALONEY. The gentleman from Pennsylvania, Mr. Keller, is now recognized for five minutes.

Mr. KELLER. Thank you, Chairwoman Maloney, and thank you to our witnesses for taking time to be with us today.

Americans in Pennsylvania and across our country are contending with huge increases in the price of daily necessities, including fuel, gasoline, and groceries. While the record inflation we have seen over the past year plays a large role, broken supply chains only exacerbate transportation issues and lead to higher-end costs. It is time to take a closer look at how the Department of Defense handles its contracts and taxpayer funds. So, my question is for Ms. Hull. Can you explain the just-in-time, or JIT, Inventory Management System?

Ms. HULL. Mr. Tenaglia or the Department may be able to speak to this more robustly because it wasn't a part of our audit. But just-in-time inventory essentially is being able to get the part just when you need it, and forecasting models are also considered in order for that particular concept to work.

Mr. KELLER. Yes. And I just, you know, want to make sure that it is the same as what I have experienced in private industry. But if the Department of Defense miscalculates the parts required for a particular program, how does the DOD go about acquiring additional or replacement parts?

Ms. HULL. Again, that was not a focus of our audit. However, we did highlight a potential opportunity for DOD to consider coordinating the quantities that they wish to purchase in order to potentially get a discount on pricing from TransDigm.

Mr. KELLER. So, what would happen to the price of a replacement item when it needs to be bought via a rapid order fulfillment?

Ms. HULL. Again, that was not a focus of our audit. However, the Department would have to look into whether they could forecast their demand in time to be able to benefit from that, and pricing, of course, would be impacted in some way.

Mr. KELLER. OK. Sole-source contracting is a longstanding issue within the Pentagon. How can Congress better work with the Department to remove barriers to entry and alleviate the many problems that come with lack of competition for these contracts?

Ms. HULL. The Department is pursuing reverse engineering. That is an option. Also, again, the strategic supplier alliance or an original equipment manufacturer would potentially cancel their licensing agreement with TransDigm and produce those products parts for the Department directly. But, again, sole-source parts by their nature, without competitive market forces, are the systemic issue that our report highlights. And without reform, without some legislation where a contracting officer can receive the information that they need to be able to make a well-informed negotiation with a contractor, you are going to continue to see these results time and time again.

Mr. KELLER. Yes, and that is really what we need to address. With a variety of accounting methods available and a large number of domestic contractors available to meet defense needs, I would urge the Department of Defense to analyze its current system to better assist both the warfighter and taxpayer. And with that, I thank you and I yield back.

Chairwoman MALONEY. The gentleman yields back.

The gentlelady from Michigan, Ms. Tlaib, is recognized.

Ms. TLAIB. Thank you so much, Chairwoman. Thank you for having this really important hearing about transparency and, really, accountability.

Mr. Howley, in a 2020 performance recap, TransDigm had reported that the company fired more than 30 percent of its work force in response to the reduced demand during the pandemic. Has TransDigm rehired all of the people that they laid off in 2020? "Yes" or "no."

Mr. HOWLEY. Excuse me. I was muted. The answer is no.

Ms. TLAIB. Yes. Yes. Just keep it unmuted for a while, OK? TransDigm also stated that it was "implementing unpaid furloughs and salary reductions across the organization." So, Mr. Howley, as we sit here today, has TransDigm restored the employees who it furloughed or had their salaries reduced in 2020? "Yes" or "no."

Mr. HOWLEY. I don't know the answer to all that in all cases. I do know—

Ms. TLAIB. OK. Please send the answer later to the committee.

Mr. HOWLEY. Yes. The commercial airline, which is—

Ms. TLAIB. Yes. Mr. Howley, OK. I am trying to get to a point. You can explain it in your response. Mr. Howley, in 2020, in response to the pandemic, you gave up about two percent of your total compensation, correct?

Mr. HOWLEY. I gave up something. I don't remember the percent.

Ms. TLAIB. OK. It was two percent. At the same time, TransDigm reported to the SEC that your total compensation in 2020 was just over \$68 million, including dividends and option awards. So, while TransDigm was laying off employees and cutting salaries, it was paying you more than \$68 million even when accounting for a measly two percent of your salary that you gave up. So, Mr. Howley, are you aware that you received more than compensation than the CEOs of Raytheon, Boeing, and Lockheed Martin combined? Combined. "Yes" or "no."

Mr. HOWLEY. I don't know what their—

Ms. TLAIB. Well, my colleague showed you a chart, yes.

Mr. HOWLEY. I don't know what their compensation is. Can you repeat the question?

Ms. TLAIB. I am trying to find out where we can get the money that you owe the American people, so I am trying to get to—

Mr. HOWLEY. Can you repeat the question to me about compensation just so I can answer it carefully, about the—

Ms. TLAIB. Basically, do you know that you received more compensation than the CEOs combined of Raytheon, Boeing, and Lockheed Martin?

Mr. HOWLEY. I don't know their compensation.

Ms. TLAIB. That is right. Your compensation was so high that TransDigm felt that it had to include a note in the shareholders report that acknowledged the "magnitude of Mr. Howley's reported compensation, particularly in light of the COVID-19 pandemic." Before we go on, Chairwoman, can I submit for the record the compensation charts, please?

Chairwoman MALONEY. Without objection.

Ms. TLAIB. Mr. Stein, to you. Dr. Stein, to you. You received about \$22 million in total compensation in 2020 after forfeiting about 25 percent of your salary, correct?

Mr. STEIN. I believe that is correct.

Ms. TLAIB. Oh, thank you for your honesty. So, to recap, at the time when American families were and still are struggling with the financial burden of the pandemic, TransDigm paid two executives here today around \$90 million, while at the same time laying off, furloughing, cutting the salaries of its other employees; \$90 million, I might add, that TransDigm got by screwing over the American people. Sadly, TransDigm is not unique. You just got caught. You know, I know that we are talking about one company, but know, for me, you all are the perfect poster child of an out-of-control defense budget that puts the interests of wealthy, well-connected people like yourselves ahead of the best interests of the American people. You are, for my residents, what corporate greed looks like in America. You two and TransDigm must be held accountable and must pay the \$20.8 million in excess profits identified by the IG. I would recommend that it comes out of your salaries as your last act before you both resign in disgrace.

I would also add on and call on the Department of Defense as a whole to ensure that not a single cent of taxpayer money ever goes to a business run by either of these folks again. It is so critically important, and, Chairwoman, we need to continue holding these folks accountable because we are not holding them accountable, and we have to cut programs and those things that actually attack this virus, protect the families at the forefront. And for all of my colleagues, they may be wearing suits and may be millionaires and wealthy folks, but they can still be scammers of our country. They can still be scamming our folks. I wish you would all treat them the same way you would if somebody was on food assistance and they didn't maybe qualify. Whatever it is, the fact of the matter is we need to hold them accountable equally as the same as we would hold anybody coming before our committee, again, that used, you know, their resources in undermining and also, you know, scamming the system to basically make a profit off of all of us.

So, I thank you and I yield.

Chairwoman MALONEY. The gentlewoman yields back.

The gentleman from Kansas, Mr. LaTurner, is now recognized. The gentleman from Kansas.

Mr. LATURNER. Thank you, Madam Chairwoman. My first question is for Ms. Hull.

In the absence of market-driven pricing, the Federal Government may be left with a take-it-or-leave-it pricing approach by sole-source manufacturers. Rather than capping profits with arbitrary profit ceilings or potentially bogging down the procurement process with pricing data requests, is there a way to drive down prices organically by improving competition from smaller, non-traditional defense contractors?

Ms. HULL. There are certainly ways that the Department can potentially begin to do that through some of the methods we discussed, like reverse engineering or the strategic supplier alliance. But like the case that we are discussing today, the majority of the parts are sole source, so there isn't another option for the Department currently.

Mr. LATURNER. No, I appreciate that. Mr. Tenaglia, this committee a few years ago spent a lot of time unpacking defense contractors' role in contributing to the high prices of spare parts, but applicable laws and regulations seem to invite practices that drive up prices for the Federal Government and for the American taxpayer by extension. Can you explain the rationale behind the Department of Defense's just-in-time inventory management practices?

Mr. TENAGLIA. Well, Congressman, I think I am not sure I would describe our acquisition of all these parts using just-in-time. Certainly we can provide some additional information from the Defense Logistics Agency about how they manage inventory, but we are talking about the number of transactions in the sample happened to be the smaller transactions by design. That was what you asked the IG to look at, and I think inherently that is going to drive some of the smaller-quantity purchases. If we were to look at some of the larger-value transactions, on the other side of the Truth-of-Negotiations Act threshold, I would expect the commercial item exception would most likely come into play, and we would not be getting certified cost and pricing data, but you would have larger transactions with perhaps larger quantities.

Mr. LATURNER. I appreciate that. Are you concerned that legislative changes that force companies to disclose cost data will hamstring the DOD's ability to move quickly when procuring spare parts, particularly with just-in-time purchasing?

Mr. TENAGLIA. So, I don't want to leave the impression that our contracting officers are always going to need to look at cost data. We have in the law a preference that puts that as the last resort. I will leave it to the Congress if they want to maintain that and you can see how that preference plays out, but the current law that we have that asks us to look at analogous pricing starting with sales data. I come back to the point I was making earlier. The starting point is really analyzing the particular part that you are buying and asking yourself and the market, doing the market research to demonstrate whether that same product is sold in the

commercial marketplace. If it is, then we will look at what other consumers are paying for that product.

But it is almost never quite that straightforward because it is usually an of-a-type commercial product, and then we need to do some analysis on the differences between the product that is sold in the commercial marketplace and the product that we are buying.

Mr. LATURNER. Thank you. Appreciate you being here today as well as the other conferees. Madam Chairman, I yield back.

Chairwoman MALONEY. The gentleman yields back.

The gentlelady from Missouri, Ms. Bush, is now recognized for five minutes.

[No response.]

Chairwoman MALONEY. We lost her. Unmute Cori Bush.

Ms. BUSH. Thank you, and thank you, Madam Chair, for convening this hearing.

St. Louis and I are very troubled to hear about yet more military waste from the IG audit. TransDigm sells a linear actuating cap which is used in both the Eagle F-15 and Stratolifter C-135 airplanes. According to the IG report, TransDigm sold this part to DOD for \$7,495 per spare part despite it only costing TransDigm \$189 to make the part. The price has increased by 400 percent in just the last three decades and doubled in just a three-year period. Mr. Tenaglia, why would DOD pay double what it paid for the same spare part just three years prior?

Mr. TENAGLIA. Thank you, Congresswoman. Part of our analysis is looking at what we have previously paid. Ideally, we are looking at what other competitive consumers are paying in the marketplace for this particular item, and I don't know if the exact same item is sold in the commercial marketplace. I suspect it is not. And then the reality becomes whether this is a flight safety item. The leverage that we have, we need the part. As the sole-source supplier, if there is no other source to buy that part, we are going to need to make the purchase to keep our aircraft flying.

Ms. BUSH. Yes. And so \$189 to make, but \$7,400 is what is being paid for this. The IG audit determined that TransDigm's excess profit for this part was over 3,800 percent. Just to be clear, that is not the profit TransDigm earned. Mr. Stein, how can TransDigm justify, though, how can you justify charging \$7,000 for a part that costs just \$189?

Mr. STEIN. I am glad you asked that question. It is a great question. There is a commercial equivalent for that part. The commercial equivalent costs \$8,182. We gave the DOD a 10-percent discount on that part, and over five years, the DOD ordered less than 40 pieces. Over five years, 40 parts. It is so small and irregular, and we gave a discount of 10 percent to commercial. It is simple to explain. I don't understand why we are here even. We are giving a discount to commercial prices.

Ms. BUSH. You are giving a discount on something that costs \$189 to make. Mr. Stein, will you commit to paying back the excess profit TransDigm received in this example as well as the other 105 parts identified by the IG as returning excess profit? "Yes" or "no."

Mr. STEIN. It isn't a "yes" or "no" answer.

Ms. BUSH. “Yes” or “no,” because what we are talking about here is something that is \$189 to make, not necessarily what somebody else is charging for it. It is \$189 to make.

Mr. STEIN. We look forward to working with the DOD—

Ms. BUSH. Reclaiming my time. Reclaiming my time.

Mr. STEIN. OK.

Ms. BUSH. It is essential that TransDigm pay back the \$20.8 million it made in excess profits as a result of this price gouging. As lawmakers, we will also work to ensure that this abuse ends. Recouping those excess profits is the difference between having housing or not, mapping environmental racism or not, having clean drinking water or not. Twenty-point-eight million dollars could fund housing for tens of thousands of our veterans, many of whom are far too often living on the street, and I know because I am out there working with them. It could map environmental racism in hundreds of communities like St. Louis that are suffering from polluted air and climate change. It could provide millions of gallons of clean drinking water for children and families, especially black and brown families, all across this country. Instead, more than 50 percent of the exorbitant \$778 billion defense budget is given to military contractors.

Ms. Hull, would you say that the linear actuating cap represents an isolated case of DOD waste and mismanagement of money?

Ms. HULL. The part that you mentioned was the highest excess profit percentage that we found during the audit, but the profit percentages ranged anywhere from 2.8 percent to 3,850.6 percent.

Ms. BUSH. Despite receiving hundreds of billions of dollars every year, the DOD has never detailed its assets or undergone a complete clean audit, likely leading to the kinds of abuse and waste we are discussing in today’s hearing. I am encouraged by the steps this committee is taking to address this pressing, pressing issue. Thank you, and I yield back.

Chairwoman MALONEY. The gentlelady yields.

The gentleman from Texas, Mr. Fallon, you are now recognized.

Mr. FALLON. Thank you, Madam Chair. I appreciate it.

Mr. Tenaglia, obviously there has got to be a balance between the needs of our warfighters and the needs of our taxpayers, and the longer that R&D takes and the longer acquisition takes, you know, it is worse for both. You know, that is money and time that is wasted, and a hot war, it could be even more. In your opinion, is it acceptable that the DOD is consistently overpaying on contracts?

Mr. TENAGLIA. Well, it is never acceptable if we are paying excessive prices, and in this case, we are talking about whether or not our contracting officers should have full access to the information, the part we just described or any of the other parts for that matter, whether we know all the facts that really would go into that. If we were in the world, non-commercial items, and, again, most of these items are probably commercial. I don’t know. You would have to do a part-by-part analysis. But in the world of non-commercial items, the way we put ourselves on level footing is the legislation that the Congress enacted many years ago, the Truth in Negotiations Act, which gives us access to the information and, furthermore, requires

companies to certify that all the facts that they are revealing to us for the purpose of negotiation are current, accurate, and complete.

That doesn't come into play here for two reasons: one, because we are below the dollar threshold for these transactions, and two, because they are commercial. But what we really need is a policy that will give our contracting officers a means to establish fair and reasonable pricing when some of the TINA exceptions are in play.

Chairwoman MALONEY.—yield back your time? Mr. Fallon, are you finished?

[No response.]

Chairwoman MALONEY. Mr. Fallon?

[No response.]

Chairwoman MALONEY. We seem to have lost Mr. Fallon. Let's go on and we can come back to him. Mr. Fallon?

[No response.]

Chairwoman MALONEY. Let's go to Mr. Clyde. Mr. Clyde, you are now recognized. We seem to have lost Mr. Fallon.

Mr. CLYDE. Thank you, Madam Chair and Ranking Member Comer, for holding this hearing today. While I appreciate a closer examination of wasteful government spending, I cannot help but notice that we need to take a look at the flaws in the Department of Defense's acquisition process, too, including what I call just-in-time inventory, and what the industry calls that as well.

Time and time again, the Department of Defense has had difficulty correctly forecasting much-needed, highly sophisticated spare parts until it comes time for repairs, thus leading, in my opinion, to costly, small-batch ordering. This issue has gone on for years. In fact, in March 1986, the GAO produced a report called, "DOD Initiative to Improve the Acquisition of Spare Parts." This report highlighted that the Department of Defense continuously purchased spare parts at high prices when less expensive alternatives were available. To further highlight the Department of Defense's flawed acquisition, in a 2015 report, the inspector general of the Department of Defense stated that in 20 of 32 reports regarding spare part price issues since 1998, it was found that the Department of Defense did not perform adequate cost or price analysis when purchasing spare parts.

You know, as a navy supply officer for over two decades, I have had a fair bit of experience when it comes to Department of Defense procurement. So, that leads me to question why are we holding the hearings on TransDigm's profits when we should be primarily focusing, in my opinion, on the Department of Defense's acquisition processes. So, Mr. Tenaglia, a question for you. Thank you for being here today. I appreciate that. Regarding item procurements, what research is done to ensure that the Department of Defense is getting the best price available, sir?

Mr. TENAGLIA. For the items we are talking about in this IG sample, for the most part it is a universe of the parts that are known to the Defense Logistics Agency. They are parts that we have procured in the past. There may be some market research to identify not only alternative sources, but alternative parts, but for most cases in the sustainment environment, I think the parts that we are talking about, there aren't alternatives. And the question is,

what can we do to create alternative sourcing where we do have sole-source suppliers such as TransDigm.

Mr. CLYDE. Right. OK. All right. So, once you have determined what the best available price is, are there things that prevent you from placing larger batch orders that would give you, you know, maybe a better price because of the increasing quantity?

Mr. TENAGLIA. In my discussions with the senior officials at Defense Logistics Agency, they recognize that that is a factor, and they describe a scenario where they were responding to a demand signal from the military departments that have needs for a particular part. Perhaps the Department in general could have done a better job at predicting when they would need that, but all those factors that go into that, I think we owe you a more robust answer that goes into the inventory management. And I am not really the subject matter expert to address that, but that is certainly a factor in the price we pay. The smaller the quantities——

Mr. CLYDE. Right.

Mr. TENAGLIA. By virtue of this particular sample, the IG was asked to only look at the smaller-dollar purchases, so inherently, you are going to have smaller batches. And so there is another universe of larger procurements with larger quantities that really weren't examined for this particular audit.

Mr. CLYDE. OK. You know, I would think that for highly sophisticated equipment intended for national security use, you know, I would think that we would generally want a little more depth when it comes to our inventory positions, you know, things like aircraft or whatever. That was my primary focus as an aviation supply officer. So, as a followup, based on your experience, what information or resources do you think DOD could use to improve forecasting and inventory management or are there any that come to mind right now?

Mr. TENAGLIA. Congressman, I actually prefer to take that one for the record. That is not my area of expertise.

Mr. CLYDE. OK. All right.

Mr. TENAGLIA. But I will get back with you with a fulsome answer.

Mr. CLYDE. OK. All right. Well, thank you. I appreciate that. Madam Chair, I yield back.

Chairwoman MALONEY. The gentleman yields back. We will now go to the gentleman from Georgia. Mr. Johnson, you are now recognized.

Mr. JOHNSON. Thank you, Madam Chair, for holding this very important hearing. And I have missed much of it having to attend two other hearings, but I am happy to be here right now. And I may ask a question that has been already asked and answered, and I told you why that may happen, so I apologize for it.

But, Mr. Stein, in your response to the OIG report, your company stated that after working with DOD officials, "There have been improvements to the procurement process." What specific improvements were made?

Mr. STEIN. It is a great question. Thanks for asking. We have formed a working group with the DOD DLA to look at pricing and procurement issues that may exist in any of our businesses. This is something we have put in place. We have hired outside consult-

ants, experts. We have retrained our people as we do constantly on this topic. We have also now gone the further step of, one, submitting commerciality packages up front on every part that has a commercial equivalent. So, we take that off the table, and we now offer volume discounts if they buy more than what they are asking for. Unfortunately, to date, they have——

Mr. JOHNSON. I am sorry for interrupting.

Mr. STEIN. Oh no. No.

Mr. JOHNSON. Let me ask you this question. What has the company done specifically to ensure that it never overcharges the government by a 3,850.6-percent profit margin on a particular product?

Mr. STEIN. Well, as I have said earlier, we disagree with that. This calculation omits the taxes and interest we paid to the Federal Government. The taxes. I don't think that that percentage received justification.

Mr. JOHNSON. Well, how much taxes did the company pay?

Mr. STEIN. The amount we were obligated to pay legally. I don't actually know the answer to that.

Mr. JOHNSON. Well, but you are saying your tax burden would substantially cut into a——

Mr. STEIN. Well, for these contracts, the taxes and interest were \$10 million, so it is half of the overcharge. Half of it that being alleged is taxes and interest that the IG somehow correlated as profit. This makes no sense.

Mr. JOHNSON. Well, it makes no sense that we would have a figure of 3,850-percent profit margin off of one product, which is kind of like a business model that you have for your company to go in and purchase companies that manufacture parts, and then getting a lock on the market so that there is no place other than your company for the government to purchase a part. And then you turn around and charge the government whatever, or charge the taxpayers actually, whatever you feel like you want to charge them, and it can be as high as 3,850 percent. I think that is despicable conduct.

This is the second time that this committee has held a hearing to address your company's price gouging on essential military parts. The last hearing that we held resulted in your Company refunding \$16.1 million requested by the Department of Defense. Do you see your company paying back the \$20 million that DOD has asked you to pay back as a result of overcharging the government?

Mr. STEIN. You know, as I have said repeatedly, we see significant accounting and legal errors in this IG report. We look forward to sitting down directly with the DOD. And I will tell you, Congressman, that if we find that TransDigm made a mistake in any of our contracting, we will gladly pay money back, but what we must do is agree to the facts. The facts are that we lost money on nine of the contracts. We only made a 37-percent average on these entire IG-audited parts, and we now know definitively that we gave the DOD and the American warfighter a 25-percent discount to commercial prices. I don't understand why we would pay back \$21 million when, as we have illustrated, it is rife with error.

Chairwoman MALONEY. The gentleman's time has expired, and we are now going to the gentleman from Kentucky, Mr. Comer. Mr. Comer, you are now recognized.

Mr. COMER. Well, thank you, Madam Chair. I am fascinated by listening to some of your socialist members talk about how the private sector should operate and what an appropriate profit level is, and all of the points they have made. But, Ms. Hull, I want to talk a little bit about the methodology in your report, and just "yes" or "no" to these questions, please.

First, the decision to make anything more than 15-percent profit is excessive. In your report, you state that a 15-percent cap did not apply by law or regulation to any of the contracts examined. Is that correct?

Ms. HULL. It is not defined as a specific 15-percent benchmark by law, no.

Mr. COMER. Correct. Yes. So, you also state that a 15-percent cap should not be the benchmark for negotiating firm-fixed-price contracts. Is that correct?

Ms. HULL. Correct. It is not a standard.

Mr. COMER. Right. Finally, you state that a 15-percent cap is not the formal position of the inspector general, and this report should not be interpreted to mean that. Is that correct?

Ms. HULL. Correct, but if I could add, we were asked to determine the fair and reasonable prices for these parts requested by the committee. And in order to do that, we had to calculate a benchmark, so that is where that 15 percent was applied.

Mr. COMER. Next, the decision to exclude taxes and interest. As Congressman Norman pointed out in your report, you state that you determined to not allow taxes and interest in your cost calculations. Is that correct?

Ms. HULL. That is correct.

Mr. COMER. You also state that the exclusion of taxes and interest from your calculations should not be interpreted to mean that offerors cannot include these costs in their negotiations. Is that correct?

Ms. HULL. Yes, but if I could add, again, we were asked to determine a fair and reasonable price. And because we received cost data, FAR 31 allowed us to look at it from that perspective, which is why we removed interest and taxes as allowable costs.

Mr. COMER. All right. So, you used two standards in this report that you yourself admit you would not advocate for. Mr. Stein, the IG report highlights a few spare parts manufactured by TransDigm that had multiple contracts in one calendar year for a very low dollar amount. I have a few questions, and, again, just a "yes" or "no" because I have two minutes and 40 seconds left. Does DOD instigate those negotiations, meaning it is DOD who comes to you and says what they need to order, correct?

Mr. STEIN. That is correct.

Mr. COMER. Does DOD determine how many of each part they need?

Mr. STEIN. Yes.

Mr. COMER. Does DOD determine when they request the parts?

Mr. STEIN. Yes.

Mr. COMER. Does this haphazard kind of contracting put you in a more difficult position?

Mr. STEIN. Absolutely. It is not regular purchases or there is no forecast to it. What comes is what I need immediately today.

Mr. COMER. Generally, would purchasing more parts at once and in a more regular manner drive down cost?

Mr. STEIN. Yes, it will drive down price and it will drive down cost, and we have offered these to the government, to the DOD, and they have not taken us up on a single offer to lower the price to buy more parts.

Mr. COMER. And I think that is what this hearing should be about, and my colleagues on the Republican side of the aisle have pointed that out. I just want to clarify a few other things in closing here. How much of your business is direct to government?

Mr. STEIN. Six percent is direct.

Mr. COMER. Six percent. Six percent is all that you sell to the government. That is what your government sales are.

Mr. STEIN. Yes, direct government sales, six percent.

Mr. COMER. What is the average price the government pays versus the commercial sector?

Mr. STEIN. On this basket of contracts, 25 percent lower.

Mr. COMER. Twenty-five percent lower. Mr. Tenaglia, based on those answers, it would appear the DOD has an issue with demand forecasting. Finally, "yes" or "no," did DOD agree to and sign all the contracts that were analyzed by the IG?

Mr. TENAGLIA. Yes, it is my understanding they did.

Mr. COMER. We are passionate about waste, fraud, and abuse in the Department of Defense, but I believe we have to look at the Department of Defense for a lot of the problems that are being discussed in this hearing today. There is a better way to order parts. We have talked about that in this committee hearing and over the five years that I have served on this committee. So, hopefully that is something that the DOD can focus on in the future to be more efficient and to be a better advocate of tax dollars.

So, Madam Chair, my time has expired, and I yield back.

Chairwoman MALONEY. The gentleman yields back. We will now hear from the gentlelady from New York, Ms. Ocasio-Cortez, and I understand Mr. Fallon is back and we will go back to him. I now recognize Ms. Ocasio Cortez.

Ms. OCASIO-CORTEZ. Thank you, Madam Chairwoman. I would like to thank all of our witnesses who are here today, and, you know, I would like to just jump straight into it.

Mr. Howley, thank you as well for being here. I just want to start off with a simple question. The spare parts that TransDigm supplied to the U.S. military were used in Afghanistan, correct?

[No response.]

Ms. OCASIO-CORTEZ. Mr. Howley?

Mr. HOWLEY. Excuse me. I was muted. I don't know the answer, but I would presume probably.

Ms. OCASIO-CORTEZ. Well, TransDigm has supplied the U.S. military with spare parts for aircraft, such as the AH-64 Apache, the C-17 Globemaster 3, the F-16 Fighting Falcon, and the CH-47 Chinook, correct?

Mr. HOWLEY. I believe so. I don't know that whole list.

Ms. OCASIO-CORTEZ. Well, each of those aircraft were used in Afghanistan. Now, TransDigm is the sole supplier for many of the spare parts that the Pentagon needs for these aircrafts. In other words, there is no question that the spare parts that TransDigm supplied to the U.S. military were used in Afghanistan. So, Mr. Howley, it does seem like the war in Afghanistan was a boon for TransDigm, correct?

Mr. HOWLEY. I don't know the answer to that.

Ms. OCASIO-CORTEZ. You don't know. Well, I have some numbers here to give us an idea. According to The Wall Street Journal, since 2001, military outsourcing has pushed Pentagon spending to about \$14 trillion. That is 12 zeros. And to give a comparison, even after averaging that number out over 20 years, that is at least 12 times the amount that we spend on essential program like SNAP. And in essence, really the United States and U.S. Government hid the real price tag of our war in Afghanistan and contracts with private companies like yours. According to Ms. Heidi Peltier at Brown University's Cost of War Program, the U.S. military's reliance on contractors has led to the rise in a camo economy in which the U.S. Government camouflages the cost of war that might reduce public support for it. So, \$14 trillion were handed over to private industry, companies like TransDigm, but also Lockheed Martin, Raytheon, and Boeing, without real transparency with the American public.

So, Mr. Howley, was there a net negative to TransDigm's bottom line, or has it been a net negative to TransDigm's bottom line that the war in Afghanistan has ended?

Mr. HOWLEY. I don't know the answer to that. I don't know where the total defense spending has gone. I think it has probably still stayed about flat. I just don't know the answer.

Ms. OCASIO-CORTEZ. OK. So, as the Executive Chairman of TransDigm, you are not sure about the financial impact of military contracting with respect to Afghanistan with your company despite the fact that it was one of the sole suppliers of many of the military supplies and contracts that they were using?

Mr. HOWLEY. No. What I said is I am not sure specifically what the impact of the cessation of the fighting in Afghanistan was on the total buys that we got from the government. I just don't know how to parse that out.

Ms. OCASIO-CORTEZ. And you don't have, like, a general idea even if it is not a specific number.

Mr. HOWLEY. I think that our defense business has been roughly flat, I believe, but I don't know the exact number.

Ms. OCASIO-CORTEZ. OK. Mr. Howley, what was your compensation in 2020?

Mr. HOWLEY. It is a public number, so you probably have it. I am not looking at it. I think it was \$68 million or thereabouts.

Ms. OCASIO-CORTEZ. Mr. Stein, what was your compensation in 2020?

Mr. STEIN. I think you have it. It was somewhere around \$20 million.

Ms. OCASIO-CORTEZ. OK. It does seem that in 2020, TransDigm did lay off its employees during this time as well. The company fired about 30 percent of its work force in order to maintain a revenue stream. Is that correct?

Mr. STEIN. Yes. I believe those numbers are accurate.

Ms. OCASIO-CORTEZ. And even while the government paid TransDigm \$1.5 billion in cash as part of a pandemic debt buyback program to prevent precisely those layoffs from occurring, you took home a total of \$90 million in compensation during that time, more than the compensation of chief executives of Lockheed Martin, Boeing, and Raytheon combined. So, let's talk about what contributed exactly to such exorbitant compensation.

Now, TransDigm sells a part called the linear actuating cap. It is used in the Eagle F-15 and the Stratolifter C-135. It cost the company only \$135 to produce. Now, Mr. Stein, how much did TransDigm charge the Pentagon for this \$135 part?

Mr. STEIN. Ten percent less than what we charged the commercial world for this part.

Ms. OCASIO-CORTEZ. Do you know how much that was?

Mr. STEIN. About 10 percent less, yes.

Ms. OCASIO-CORTEZ. So, about \$7,495 for a part that cost about \$135.

Mr. STEIN. Yes, and the commercial part is \$8,182.

Ms. OCASIO-CORTEZ. And that is a profit margin of about 3,850 percent.

Mr. STEIN. No, that is not how—

Chairwoman MALONEY. The gentlelady's time has expired. He can respond in writing to her question.

Chairwoman MALONEY. Mr. Fallon, you are now recognized for your two remaining minutes and we think have lost you during this process. Welcome back. We now recognize you.

Mr. FALLON. Madam Chair, thank you. Thank you very much. I appreciate it.

Mr. Tenaglia, has the DOD acquired any IP from sole-source contracts?

Mr. TENAGLIA. Generally, that is not what we do. What we try to do in some limited circumstances is produce intellectual property using our own engineers and sending out technical data packages for re-procurement through reverse engineering. But it is not generally our practice to buy back the intellectual property from sole-source providers.

Mr. FALLON. Do we purchase any IP at all?

Mr. TENAGLIA. Well, for the items we are talking about in this spare part universe, all the decisions about intellectual property were made long ago, and so now we are living with some of those decisions. In many cases, it makes the most sense for the Department to allow companies to retain their intellectual property. Sometimes that results in putting us in a less-than-the-best position with respect to competition, but that is a tradeoff we make. It would be very expensive for the Department to buy up all the intellectual property, and I am not sure industry would generally be interested in selling us all their intellectual property.

Mr. FALLON. Yes, because I was going to followup with, do you think this is cost-effective to do it that way?

Mr. TENAGLIA. Well, I think to the extent that we can do whatever we can to maintain competition for our weapons systems and spare parts that will put us in the best position to get the best price.

Mr. FALLON. Well, thank you. Thank you, Madam Chair. I yield back.

Chairwoman MALONEY. The gentleman yields back.

The gentlelady from New Mexico, Ms. Herrell, is now recognized for five minutes.

Ms. HERRELL. Thank you, Madam Chair. Can you hear me OK? OK. I had had some problems with my other computer.

Just kind of following along just the discussion in terms of procurement, I am directing this question to Ms. Hull. In October, members of the House Appropriations Committee requested that this committee conduct an independent review of the evidence used to support the Department of Defense inspector general's April 2020 report on the Joint Enterprise Defense Infrastructure—JEDI—cloud procurement. Since then, I have received extensive briefings on this matter. New evidence obtained through a FOIA raises serious questions about criminal violations in connection with the JEDI procurement. Plus, I have asked to meet with Acting Inspector General Sean O'Donnell over the oversight investigation and the evidence collected to support the April 2020 JEDI report. I hope this meeting can be arranged with the IG soon.

As Members of Congress, it is without question our right to review documents referenced publicly and cited repeatedly in the JEDI report without extensive redactions. And as members of this committee, especially in our oversight capacity, we must review the actual evidence underlying the conclusions in the JEDI report. It is critical that Congress have trust and confidence in the integrity of the procurement process and the Office of the Inspector General, and I intend to do everything to see that this happens. Ms. Hull, will you commit that the IG will meet with me and any other member of this committee?

Ms. HULL. While I did not personally work on the JEDI product that you mentioned, I will certainly take that question back.

Ms. HERRELL. Thank you. I would very much appreciate it. And, Madam Chair, I hope that this committee will proceed with an investigation on this important matter. Thank you so much, and I yield back.

Chairwoman MALONEY. The gentlelady yields back. And before I close, I would like to offer the ranking member an opportunity to give closing remarks if he would so wish. Mr. Comer, you are now recognized.

Mr. COMER. Well, thank you, Madam Chair. I will be very brief. We have got a lot of problems in America. We have got a lot of problems with reckless, unnecessary spending. If we want to focus on the Department of Defense now and look at a big ticket item of waste, we should be holding hearings on exactly how much military equipment was left behind in the debacle withdrawal that President Biden orchestrated in Afghanistan. This is something that I get asked every day in my congressional district, and, unfortunately, we don't know the answer. You know, you are talking billions and billions of dollars. That is what we need to be focused on.

What we have learned from this committee hearing today is the same thing we learned 2 or 3 years ago when we had this same hearing. The Department of Defense needs to do a better job in establishing an inventory and in establishing how they purchase

parts. We have heard that in other committee hearings as well, so I would like to see some type of plan moving forward from the Department of Defense. There is no question there is a lot of wasteful spending at the Pentagon, and it is our duty on the Oversight Committee to try to reduce waste, fraud, and abuse in the Federal Government.

I think the members on your side of the aisle, Madam Chair, are trying to bill this as a government contracting company. Six percent of their sales goes to the Federal Government and the other 94 percent are commercial, and they said they had to sell their parts to the government at a 25-percent discount to what they sell in the commercial market, to the commercial airlines and companies like that. So, you know, I think we can spend our time better looking at the bigger ticket items and trying to bring the Pentagon in, the Department of Defense officials in, to see if there is a better way, if we can help facilitate that, a better way to do business at the Department of Defense.

Again, Madam Chair, thank you, and I yield back.

Chairwoman MALONEY. I thank the gentleman for his testimony and for co-chairing this with me, and I would now like to thank our witnesses for testifying today. Mr. Howley, Mr. Stein, thank you for agreeing to testify. Mr. Tenaglia and Ms. Hull, thank you for your service to our country. Ms. Hull, I would like to thank you in particular for your continued work to hold TransDigm accountable and root out waste, fraud, and abuse in the Department of Defense.

We heard today that TransDigm is fleecing taxpayers by refusing to provide cost data, which forces contracting officers to accept TransDigm's prices in order to secure the parts our military desperately needs. TransDigm's debate over the 15-percent benchmark is a deflection tactic. TransDigm, in some cases, received over a 1,000-percent profit, so whether the benchmark is 15, 20, or even 50 percent, TransDigm received outrageously excessive profits.

In regard to the IG's exclusion of tax and interest, they did so in accordance with Federal cost principles. The IG report explains that TransDigm is highly leveraged, leading to high interest payments on debt. Americans should not have to be footing the bill for TransDigm's acquisition strategy. Mr. Howley and Mr. Stein also discussed giving the Department of Defense a discount from the price it sells to commercial airlines. Regardless of whether the Defense Department received its discount, it does not change the fact that the inflated prices still resulted in excess profits of over 1,000 percent in multiple instances. I strongly urge my colleagues on both sides of the aisle to support reforms that would empower contracting officers and require companies like TransDigm to provide cost information when it is necessary to determine that proposed prices are unfair and unreasonable.

Mr. Howley and Mr. Stein, we have heard from many committee members. We expect TransDigm to pay back the outrageous excess profits. All \$20.8 million should be repaid. It received this money at the expense of our warfighters and American taxpayers. We expect you to repay this money to the taxpayers.

Now, in closing, I want to thank our panelists for their remarks—all of them—and I want to commend my colleagues for participating in this important conversation.

Before we adjourn, I would like to ask unanimous consent to submit into the record a statement from the Project on Government Oversight.

Without objection, so ordered.

Chairwoman MALONEY. With that, all members will have five legislative days within which to submit extraneous material and to submit additional written questions for the witnesses to the chair, which will be forwarded to the witnesses for their response. I ask our witnesses to please respond as promptly as they are able.

Chairwoman MALONEY. And with that this meeting is adjourned [Whereupon, at 12:57 p.m., the committee was adjourned.]

