

Project On Government Oversight

May 9, 2011

Department of Defense
Mr. Gordon S. Heddell
Inspector General
400 Army Navy Drive
Arlington, VA 22202-4704

Dear Mr. Heddell,

The Project On Government Oversight (POGO) is writing to express our concerns about the award and administration of contracts, grants, and other transactions, as well as about the effectiveness of avoiding or preventing conflicts-of-interest, at the Defense Advanced Research Projects Agency (DARPA).

Recent revelations in the press concerning DARPA Director Regina Dugan's continued financial and familial relationship with DARPA contractor RedXDefense raise concerns as to whether DARPA effectively prevents conflicts of interest. In addition, press reports about public comments by DARPA Deputy Director Kaigham "Ken" Gabriel indicate that DARPA changed its interpretation of ethics and conflict-of-interest rules within DARPA to become more permissive. In response to questions from POGO, DARPA's spokesman Eric Mazzacone seemed to contradict the reported statements by the Deputy Director. An investigation by your office could clarify this discrepancy.

Background

Regina Dugan was a program manager at DARPA in the 1990s and left the agency in 2000.¹ In 2005 Dugan co-founded and became the chief executive of contractor RedXDefense and a venture capital firm called Dugan Ventures.² According to Wired, RedXDefense "relied, in many ways, on the explosives-detection investigations she spearheaded in her previous stint at the agency, during the 1990s."³

Dugan became the Director of DARPA in July 2009.⁴ Dugan's June 15, 2010 financial disclosure form indicates that RedXDefense owes Dugan \$250,000 for a "loan/note" and

¹ Defense Advanced Research Projects Agency, "Leadership." <http://www.darpa.mil/Leadership.aspx> (Downloaded May 6, 2011) (hereinafter "Leadership")

² Dugan Ventures, "Dugan Ventures: Our Team." <http://www.duganventures.com/team.html> (Downloaded May 6, 2011)

³ Noah Schachtman and Spencer Ackerman, "All in the Family: Darpa Chief Owed \$250,000 by Darpa Contractor," *Danger Room*, March 30, 2011. <http://www.wired.com/dangerroom/2011/03/all-in-the-family-darpa-chief-owed-250000-by-darpa-contractor> (Downloaded May 6, 2011) (hereinafter "All in the Family")

⁴ "Leadership"

additionally details that she has between \$151,000 and \$305,000 in assets and income from RedXDefense.⁵ Dugan also has family ties to the company: RedXDefense's current CEO is her father, Vince Dugan, and her uncle John Dugan is on RedXDefense's board. (Attachment 1)

RedXDefense has received approximately \$6 million in contracts from DARPA since it was founded.⁶ The company received about 30 percent of the \$6 million, or \$1.75 million, since Dugan became the Director of DARPA.⁷ Overall, a substantial portion of the total value of RedXDefense's government contracts, are with DARPA, according to contract information posted on USA Spending.gov.⁸

Dugan recused herself from participating "personally and substantially" from "any particular matter" that would impact RedXDefense's bottom line. Furthermore, DARPA spokesman Eric Mazzacone told Wired's *Danger Room* that Dugan has not participated "in any dealings between the agency and RedXDefense related to [a recently awarded \$400,000] contract."

POGO's Concerns

POGO worries that a recusal may not be enough to ensure integrity in the contract process. For the sake of comparison, an information paper from the Office of the Agency General Counsel requires Army generals who occupy certain positions, including the Military Deputy to the Assistant Secretary of the Army for Acquisition and the Director of the Joint Improvised Explosive Device Defeat Organization, to divest from all defense contractors, including RedXDefense.⁹ One Department of Defense Federally Funded Research and Development Center (FFRDC) also has a stronger conflict-of-interest policy, generally not permitting its employees to have a "significant affiliation" with a business or financial interest that creates

⁵ Ken Dilanian, "Federal defense agency granted contracts to company with ties to director," *Los Angeles Times*, April 3, 2011. <http://articles.latimes.com/2011/apr/03/nation/la-na-darpa-20110403> (Downloaded May 6, 2011) (hereinafter "Federal defense agency granted contracts to company with ties to director")

⁶ "All in the Family"

⁷ "All in the Family"

⁸ USA Spending.gov, "Prime Award Spending Data: RedXDefense."

<http://usaspending.gov/search?query=&searchtype=&formFields=eyJJSZWNpcGllbnROYW11TGhlc2UiOlsiUmVkeGRlZmVuc2UglExsYyJdfQ==>

<http://usaspending.gov/search?query=&searchtype=&formFields=eyJJSZWNpcGllbnROYW11TGhlc2UiOlsiUmVkeGRlZmVuc2UiXX0=> (Downloaded May 6, 2011)

⁹ Ethics guidance states: "Military officers in the grades of 0-9 and 0-10 who occupy certain positions, such as the Heads of the Army Materiel Command (e.g., the Commander and Deputy Commander); the Army Inspector General; Military Deputy to the Assistant Secretary of the Army for Acquisition, Technology and Logistics; Chief Information Officer; Chief of Engineers; Commander, Space and Missile Command; and Director, Joint Improvised Explosive Device Defeat Organization, are prohibited from holding interests in **any defense contractor**. See: Department of Defense, "Standards of Conduct Office." http://www.dod.mil/dodgc/defense_ethics/ (Downloaded May 6, 2011) for the contractor list. There is no de minimis amount that may be retained. The officer is required to divest all holdings in any defense contractor, regardless of the value held." (emphasis theirs) Office of the Army General Counsel, "Ethics Letter - General Officer Nominations for Three and Four Star Positions," *Guidance by Subject*, May 5, 2011. <http://ogc.hqda.pentagon.mil/EandF/Documentation/guidance.aspx> (Downloaded May 6, 2011) The referred to website links to a list of defense contractors that include RedXDefense. "FY2010 DoD Contractors," p. 202. http://www.dod.mil/dodgc/defense_ethics/resource_library/fy10_Contractors.pdf (Downloaded May 6, 2011)

conflicts or the appearance of conflicts.¹⁰ Given the Director's leadership role and continued familial and financial stake in RedXDefense, recusal may be insufficient to mitigate a conflict-of-interest.

Dugan's case may not be isolated. DARPA Deputy Director Gabriel told the *Los Angeles Times* that it is common for DARPA officials to have financial ties to DARPA contractors and for this to be handled through recusals.¹¹ This heightens the need for oversight of how DARPA interprets ethics rules and prevents conflicts.

We are especially concerned because there is only one layer of management between the Director and program managers.¹² This is a reason why more stringent measures than recusal may be needed to adequately mitigate conflicts (as opposed to organizations where program managers may be more insulated from senior leadership).

Mazzacone told POGO that DARPA's policies have been "consistent with the ethics laws and regulations outlined previously,"¹³ but recent reporting on public comments by Gabriel suggest otherwise. Specifically, we seek more information on reported comments by Gabriel last year that DARPA reinterpreted conflict-of-interest rules to make them more "realistic."¹⁴

Director Dugan testified to Congress in March that there has also been an acceleration of contract and grant proposal approvals.¹⁵ POGO wonders if this acceleration reflects, in part, changes to DARPA's interpretation of ethics rules.

Finally, an examination of DARPA's management of contractor conflicts of interest is overdue. A search of the Department of Defense Office of the Inspector General's (DoD OIG) public reports found that the most recent DoD IG Audit of DARPA's contracting processes was in 1997.¹⁶ Your office found contract officers awarded 13 of 18 contracts without documented cost reviews of contractor proposals and approved precontract costs without adequate justifications.¹⁷ Inappropriate decisions are more likely to occur when processes are circumvented and decisions are not based on documented and well-established reviews and justifications.

¹⁰ Department of Defense, Office of the Inspector General, *Alleged Conflict of Interest: Admiral Dennis C. Blair, U.S. Navy (Retired) President, Institute for Defense Analyses* (Case Number: H06L101153224), p. 9. <http://www.dodig.mil/fo/Foia/ERR/Blairreport113006.pdf> (Downloaded May 6, 2011)

¹¹ "Federal defense agency granted contracts to company with ties to director"

¹² Statement by Regina E. Dugan, Director, Defense Advanced Research Projects Agency, Submitted to Subcommittee on Emerging Threats and Capabilities, United States House of Representatives, March 1, 2011, p. 20. http://armedservices.house.gov/index.cfm/files/serve?File_id=7ccf4551-0f9b-4212-9349-e846475c5655 (Downloaded May 6, 2011) (hereinafter Statement by Regina E. Dugan)

¹³ Email correspondence with Eric Mazzacone, DARPA spokesman, on April 12, 14 and 19, 2011. In POGO's possession and available on request.

¹⁴ Erwin Gianchandani, "DARPA a year later," *The Computing Community Consortium Blog*, July 21, 2010. <http://www.cccblog.org/2010/07/21/darpa-a-year-later/> (Downloaded May 6, 2011)

¹⁵ "Statement by Regina E. Dugan, p. 21.

¹⁶ Department of Defense, Office of the Inspector General, *Award and Administration of Contracts, Grants, and Other Transactions Issued by the Defense Advanced Research Projects Agency* (Report No. 97-114), March 28, 1997. <http://www.dodig.mil/audit/reports/fy97/97-114.pdf> (Downloaded May 6, 2011) (hereinafter Report No. 97-114)

¹⁷ Report No. 97-114, p. 4.

Request

We urge the DoD Office of Inspector General to:

1. Determine the adequacy of DARPA's selection, award, and administration of research projects;
2. Describe any changes in the last three years in the interpretation of ethics rules, regulations, and law by DARPA's senior leadership, DARPA's general counsel, or by the DoD Office of General Counsel, as they relate to mitigating conflicts of interest in hiring, and in the award of grants and contracts;
3. Detail how conflict-of-interest mitigation has been used at DARPA and by its contractors and grantees over the last four and a half years, including how often recusals were filed, waivers issued, and divestments made by DARPA employees, contractors, and grantees in FY2007, FY2008, FY2009, FY2010, and the first half of FY2011;¹⁸
4. Determine the appropriateness of the use of DARPA's conflict-of-interest mitigation instruments and their effectiveness, given the facts presented by DARPA employees', contractors', and grantees' personal and financial interests, particularly for employees at the GS-15 or higher level. This must include an examination of confidential financial disclosure statements for ownership of stock or other financial or personal connections to firms with contracts or grants with DARPA;
5. Determine whether DARPA has written ethics policies or related ethics training and if there is clear understanding of applicable ethics rules within DARPA;¹⁹
6. Determine whether current DARPA senior officials, including Dugan, were fully in compliance with the terms of their recusal or other conflict-of-interest mitigation agreement, including whether Dugan remained completely uninvolved with decision-making involving her company;
7. Determine whether any DARPA employee dealing with RedXDefense knew that their director had ties to the company before there was reporting on the connection; and
8. Examine how DARPA conflict-of-interest policies compare to other DoD agencies, DoD FFRDCs, or other agencies with similar missions and how policy differences may increase or decrease risks of conflicts.

As a government agency pursuing cutting-edge technology for our national security, DARPA is uniquely challenged to make sure that they are close enough to industry to gain the benefits of idea and technology transfer. We urge the DoD IG to immediately pursue an audit to ensure that DARPA selects and awards grants and contracts with integrity.

¹⁸ The DoD IG conducted an audit into consultant conflicts of interest at the Department in 1994. Department of Defense, Office of the Inspector General, *Organizational and Consultant Conflicts of Interest* (Report No. 94-174), August 10, 1994. <http://www.dodig.mil/Audit/Audit2/94-174.pdf> (Downloaded May 6, 2011)

¹⁹ A past DoD IG audit found that the lack of a clear written policy contributed to confusion regarding conflict-of-interest in selection processes. Department of Defense, Office of the Inspector General, *Acquisition: Allegations of Impropriety in the Selection Process at the Office of the Director, Defense Research and Engineering* (D-2003-089), May 12, 2003. <http://www.dodig.mil/audit/reports/fy03/03-089.pdf> (Downloaded May 6, 2011)

Please contact me or Nick Schwellenbach at (202) 347-1122 if you have any questions or need further information, evidence to aid your efforts, or if you would like to discuss this request further.

Sincerely,

A handwritten signature in blue ink that reads "Danielle Brian". The signature is written in a cursive style with a large initial "D" and a long, sweeping tail on the "n" of "Brian".

Danielle Brian
Executive Director
Project On Government Oversight (POGO)