



Fact Sheet: End Price Gouging on Federal Contracts

The Problem

Since 1994, companies doing business with the federal government have perpetrated one of the biggest frauds against agencies and the public by convincing Congress to define products and services as “commercial” even if they were never customarily used by or sold to the general public.¹ In so doing, these items escape oversight, which results in one-sided negotiations and wasted taxpayer dollars.²

Once a product or service is labeled “commercial,” defense and civilian agencies are prohibited from gaining access to certified cost or pricing data that is essential to ensure the government obtains fair and reasonable prices when negotiating with companies.³ Instead, that crucial data is withheld, companies set their own prices, and the government makes these purchases without adequate insight into whether it’s getting a fair deal. This results in overcharges and wasted taxpayer money. An example of the government receiving insufficient cost and pricing data during negotiations is illustrated in a recent Lockheed Martin agreement to pay the government over \$41 million, settling defective pricing allegations.⁴

The current system also places all the burden on government officials to conduct market research and find whatever data they can, which slows down the procurement process and costs additional time and money.⁵

In December 2021, the inspector general for the Department of Defense (DOD) wrote in a legislative proposal that in the case of TransDigm Group, Inc., “generally once a conversion to a commercial product or commercial service is made, it is common for prices to increase and

¹ Public Law 103-355, Sections 1202 and 8001 (1994), <https://www.congress.gov/103/statute/STATUTE-108/STATUTE-108-Pg3243.pdf>; 41 U.S.C. § 103 (2025), <https://www.law.cornell.edu/uscode/text/41/103>; 41 U.S.C. § 103a (2025), <https://www.law.cornell.edu/uscode/text/41/103a>.

² Tycko & Zavareei Whistleblower Practice Group of Tycko & Zavareei LLP, “Truth in Negotiations Act,” National Law Review, May 18, 2024, <https://natlawreview.com/article/truth-negotiations-act>.

³ 10 U.S.C. § 3703 (2025), <https://www.law.cornell.edu/uscode/text/10/3703>; 41 U.S.C. § 3503 (2025), <https://www.law.cornell.edu/uscode/text/41/3503>.

⁴ Department of Justice, “Lockheed Martin Corporation Agrees to Settle False Claims Act Allegations of Defective Pricing,” Press Release, February 6, 2025, [https://www.justice.gov/opa/pr/lockheed-martin-corporation-agrees-settle-false-claims-act-allegations-defective-pricing#:~:text=Lockheed%20Martin%20Corporation%20Agrees%20to%20Settle%20False%20Claims%20Act%20Allegations%20of%20Defective%20Pricing,-Thursday%2C%20February%206&text=Lockheed%20Martin%20Corporation%20\(LMC\)%20has.for%20F%2D35%20military%20aircraft](https://www.justice.gov/opa/pr/lockheed-martin-corporation-agrees-settle-false-claims-act-allegations-defective-pricing#:~:text=Lockheed%20Martin%20Corporation%20Agrees%20to%20Settle%20False%20Claims%20Act%20Allegations%20of%20Defective%20Pricing,-Thursday%2C%20February%206&text=Lockheed%20Martin%20Corporation%20(LMC)%20has.for%20F%2D35%20military%20aircraft).

⁵ Federal Acquisition Regulation, Subparts 12.202 and 12.209 (2025), https://www.acquisition.gov/far/part-12#FAR_Subpart_12_2.

subsequent contracting officers find it difficult to obtain data necessary to determine price reasonableness and negotiate fair and reasonable prices on behalf of the taxpayer.”⁶

TransDigm’s practice seems to be par for the course, as the Defense inspector general wrote in 2014 that “In commercial, sole-source situations, suppliers may exploit the lack of competitive markets and demand unreasonable prices.”⁷

Inaccurate “commercial” classifications have been a problem for decades. The DOD’s Panel on Contracting Integrity wrote in a 2009 report to Congress that the commercial item definition needed to change because it was “a contract pricing vulnerability.” The panel specifically pointed to the terms “of a type” and “offered for sale” as issues and recommended that they be eliminated.⁸

The panel’s findings align with those of the Government Accountability Office a few years earlier, when it advised contracting officials that like “misclassifying acquisitions as commercial,” the commercial definition resulted in an “increase” in sole-source contract spending, and therefore they should “avoid sole-source situations because sometimes contractors may attempt to exploit the lack of competitive markets and demand unreasonable prices.”⁹ Over the years, defense cargo aircraft have been sold as commercial products, and numerous “commercial” spare parts contracts have resulted in price gouging because government officials cannot perform adequate cost or price analysis.¹⁰

In 2012 and 2015, the DOD pushed for a pro-taxpayer commercial definition.¹¹ The Project On Government Oversight (POGO) supported the department’s proposals, but they were opposed by

⁶ U.S. Department of Defense Inspector General, *Audit of the Business Model for TransDigm Group Inc. and Its Impact on Department of Defense Spare Parts Pricing*, DODIG-2022-043, (2021), 78, <https://media.defense.gov/2021/Dec/27/2002914678/-1/-1/1/DODIG-2022-043%20508.PDF>.

⁷ U.S. Department of Defense Inspector General, *U.S. Air Force May Be Paying Too Much for F117 Engine Sustainment*, DODIG-2015-058, (2014), 5, <https://media.defense.gov/2014/Dec/22/2001713454/-1/-1/1/DODIG-2015-058.pdf>.

⁸ U.S. Department of Defense, Office of the Under Secretary of Defense, Acquisition, Technology, and Logistics, *Panel on Contracting Integrity 2009 Report to Congress*, (2009), 20, https://web.archive.org/web/20201018102735/http://www.acq.osd.mil:80/dpap/cpic/cp/docs/Panel_on_Contracting_Integrity_2009_to_Congress.pdf.

⁹ Government Accountability Office, *DOD CONTRACTING: Efforts Needed to Address Air Force Commercial Acquisition Risk*, GAO-06-995, (2006), 3, <https://www.gao.gov/assets/gao-06-995.pdf>.

¹⁰ Dana Liebelson “We Pause for This Commercial...Sale,” *TIME*, May 22, 2012, <https://nation.time.com/2012/05/22/we-pause-for-this-commercial-sale/>; U.S. Department of Defense Inspector General, “Summary of DOD Office of Inspector General Spare-Parts Pricing Audits: Additional Guidance is Needed,” DODIG-2015-103, 4, <https://media.defense.gov/2015/Mar/31/2001713486/-1/-1/1/DODIG-2015-103.pdf>.

¹¹ U.S. Department of Defense, “Sec. 806. Revision to Definition of Term “Commercial Item” For Purposes of Federal Procurement Statutes Providing Procedures For Procurement Of Commercial Items,” (2012), <https://web.archive.org/web/20130728110628/http://pogoarchives.org/m/co/dod-legislative-proposal-commercial-item-definition-20120400.pdf>; U.S. Department of Defense, Under Secretary of Defense, “Implementation Directive for Better Buying 3.0 – Achieving Dominant Capabilities through Technical Excellence and Innovation,” April 9, 2015, 22, <https://web.archive.org/web/20150425101616/http://bbp.dau.mil/docs/BBP3.0ImplementationGuidanceMemorandumforRelease.pdf>.

federal contractors that benefit from a system that favors wasteful spending, and rejected by Congress.¹²

Congress must ensure that the definition of “commercial” means the product or service is actually sold to the general public on the open market in substantial quantities. Congress must stop these companies from exploiting the buying system, restore the government’s ability to aggressively negotiate contracts, and prevent further price gouging.

The Solution

To save taxpayer dollars and reduce wasteful federal contract spending, we recommend the following changes be made to the definition of commercial products and services to ensure agencies are truly buying items that are sold to the general public:

ENSURING COMMERCIAL PRODUCTS AND SERVICES ARE THOSE THAT ARE ACTUALLY SOLD TO THE PUBLIC MARKETPLACE.

(a) **ELIMINATION OF “OF A TYPE” PRODUCTS AND “SIMILAR” SERVICES.-**

(1) Section 103 of title 41, United States Code, is amended by striking “of a type” in paragraphs (1)(A).

(2) Strike Section 103(2) through (6).

(3) **SERVICES.-** Section 103a of title 41, United States Code, is amended by striking “of a type offered and” in paragraph (2).

(4) Section 103a of Title 41, United States Code, is amended by striking “similar services” and inserting “services” and striking “similar to those” in paragraph (1)(B).

(b) **ELIMINATION OF ITEMS AND SERVICES MERELY “OFFERED” FOR SALE, LEASE, OR**

LICENSE.-

(1) **PRODUCTS.-** Section 103 of title 41, United States Code, is amended by striking “, or offered for sale, lease, or license,” and adding “in substantial quantities” after “public” in paragraph (1)(B).

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¹² Scott Amey, “Defense Department’s New Definition of ‘Commercial Item’ Will Save Money,” Project On Government Oversight, May 2, 2012, <https://www.pogo.org/analysis/defense-departments-new-definition-of-commercial-item-will-save-money>; Scott Amey, “POGO Supports Defense Department Proposal to Buy Items that have a Genuine Commercial Market,” Project On Government Oversight, October 2, 2015, <https://www.pogo.org/policy-letters/pogo-supports-defense-department-proposal-to-buy-items-that-have-a-genuine-commercial-market>.