The Problem

Companies with exclusive government contracts regularly price-gouge the Pentagon and waste taxpayer dollars. A recent Department of Defense (DOD) inspector general report found that one company, TransDigm Group Inc., made $20.8 million in “excess profits” in two and a half years as a sole-source spare parts supplier to the department. TransDigm charged as much as 3,850.6% above the “fair and reasonable price” for one undisclosed part. The inspector general’s report also noted that there have been numerous instances of the “DOD paying excessive profits on sole-source contracts” over the past 23 years when cost reviews were not performed. It’s notable that TransDigm did not violate any laws when it grossly overcharged the DOD for defense equipment. Weakened laws, combined with a lack of competition in the contracting world, grant companies like TransDigm indiscriminate authority to set prices, with no way for the DOD to confirm whether they are fair and reasonable. Allowing these practices to continue places the Defense Department in a terrible buying position and leads to enormous waste of taxpayer dollars.

Only a limited number of defense contracts require companies to provide the agencies with “certified data” — current, complete, and accurate cost and pricing information — during contract negotiations. This problem is made worse by the fact that certified data is not required for any contracts that fall under the current threshold of $2 million. In the case of TransDigm, over 95% of its DOD contracts from January 2017 to June 2019 fell below the mandatory disclosure thresholds during that timeframe.

Defense contractors have also lobbied over many years to devise an artificially inclusive “commercial item” definition. So-called commercial items do not require certified data, and the current definition includes specialized items that are not sold to the general public, creating a loophole for defense contractors to avoid sharing that data.

Weak cost or pricing data disclosure requirements and an overly broad commercial item definition leave contractors free to demand any price, with few tools for agency officials to negotiate fair deals.

The Solution

2 Department of Defense Inspector General, Audit of the Business Model for TransDigm Group Inc., ii [see note 1].
3 Department of Defense Inspector General, Audit of the Business Model for TransDigm Group Inc., ii [see note 1].
Congress should prevent defense contractors from price-gouging the Pentagon and wasting taxpayer money by implementing commonsense legislative reforms. Specifically, Congress should:

- **Make providing certified data, including in commercial item procurements without competition, the rule rather than the exception.** This would increase the federal government’s leverage during negotiations because it would mandate cost and pricing disclosures and ensure agencies are entering fair deals.

- **Lower the mandatory disclosure threshold for certified data.** The current threshold of $2 million is far too high. Many sole-source contracts never reach the threshold and therefore never provide government officials with current, complete, and accurate cost and pricing information.

- **Instruct agencies to track and post to a public database when companies refuse to produce cost or pricing data as requested.** Such a database would incentivize better behavior from companies seeking exclusive government contracts with the Pentagon and help government officials weed out risky, less reliable companies.

- **Institute noncompliance penalties,** such as mandatory refunds or future ineligibility for government contracts. These penalties would compel companies to provide accurate data during contract negotiations or risk losing government business.

**Additional Context**

In 1962, Congress passed into law the Truth in Negotiations Act (TINA), a set of statutes designed to enable the government to determine “fair and reasonable” contract prices. TINA obligated companies to disclose cost and pricing data during contract negotiations. TINA also required contractors to correct overpricing and provide mandatory refunds. This proved useful in the 1980s, when the Project On Government Oversight (POGO) exposed Pentagon waste, fraud, and abuse that included contracts for $436 hammers, $640 toilet seats, and $7,600 coffee makers.

In 2013, TINA became the Truthful Cost or Pricing Data Act. This law recognized defective pricing as commercial fraud and amplified consequences for abusive companies. Over the years, however, companies have worked to sidestep accountability and push Congress to erode the law through exemptions and loopholes. For example, the certified reporting threshold was raised from $100,000 to $500,000 in 1994, and up to the current $2 million threshold from $750,000 in 1995.

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2018.9 The same gutting has occurred with the commercial item definition, which led to wasteful spending.10

Even the Defense Department pushed Congress to fix the commercial item definition a decade ago, but Congress took its marching orders from the defense industry, which opposed the proposed solution.11

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