

United States Senate

SENATE CAUCUS ON
INTERNATIONAL NARCOTICS CONTROL
HART SENATE OFFICE BUILDING, ROOM 818-C
WASHINGTON, DC 20510

May 16, 2016

Via Electronic Transmission

The Honorable Charles Rosenberg
Acting Administrator
Drug Enforcement Administration
700 Army Navy Drive
Arlington, VA 22202

Dear Acting Administrator Rosenberg:

We write to express our serious concerns about the issues raised in the Department of Justice Office of Inspector General's (DOJ-OIG) March 2016 audit of the Drug Enforcement Administration's (DEA) aviation operations with the Department of Defense (DOD) in Afghanistan.¹ As such, we ask that you provide the information requested in the questions below, in addition to an update on your agency's actions to safeguard against similar incidents in the future.

The DOJ-OIG report focused on a joint effort by DOD and DEA to modify a plane for counternarcotics purposes in Afghanistan. The original budget for the plane with modifications was \$22 million and was scheduled for completion by December 2012.² However, DEA's failure to adequately oversee the project has resulted in taxpayers spending over \$86 million on a plane that still sits on blocks in the United States while more than one thousand missions went unfulfilled in Afghanistan due to a shortage of aircraft. The DOJ-OIG audit determined that DEA mismanagement included: violations of federal procurement regulations, failure to comply with the terms of Memorandum of Understanding (MOU) agreements with DOD, diverting project funding for unallowable expenses, and failure to adequately manage air assets and program records in Afghanistan to ensure that mission needs were met. We are particularly concerned about the incidents outlined below.

According to the report, DEA violated the Federal Acquisition Regulation (FAR) during the purchase process in 2008 and paid \$8.6 million for an ATR 500 aircraft while a suitable alternative, the ATR 300, would have cost \$3 million less.³ Moreover, the agency never justified

¹ Department of Justice, Office of Inspector General, Audit of the Drug Enforcement Administration's Aviation Operations with the Department of Defense in Afghanistan Audit Division 16-16 (2016), available at <https://oig.justice.gov/reports/2016/a1616.pdf>.

² Id. at i.

³ Id. at 9.

purchasing the ATR 500 when it had pilots and mechanics already trained and available to fly the ATR 300 that also received a passing score during the first round of consideration.

Between 2012 and 2015, DOD and DEA entered into five MOUs through which DEA received \$29 million to support counternarcotics efforts in Afghanistan. However, the DOJ-OIG audit determined that DEA spent over \$2.3 million of that funding on the ATR 500 (which never flew in Afghanistan) and over \$600,000 on non-Afghanistan operations and other unallowable uses, including for missions in Florida, the Caribbean, and South America.⁴

DEA also failed to maintain adequate records of the goals and objectives of the ATR 500 project and aviation operations in Afghanistan and transferred the ATR 500 to contractors for modification without documentation. Further, the Agency failed to document, with either the contractor or DOD (a partner in the project) agreed-upon modifications, deadlines, or liability for any damages by the contractor during modification. Although DOD officials expressed concerns about the contractor's ability to complete the project in 2014⁵ and DEA pulled its aviation operations out of Afghanistan in July 2015⁶, DOD signed an \$8.5 million contract to complete the modifications by June 2016.⁷

Moreover, neither DEA nor DOD ensured that the MOUs contained "clear objectives and deliverables."⁸ DOD did require DEA to submit reports on "missions flown and missions declined in Afghanistan,"⁹ yet the DOJ-OIG audit found significant discrepancies in the data DEA provided.¹⁰ Further analysis of DEA's quarterly reports determined that "only 14 percent of the missions that the DEA flew in Afghanistan between October 2011 and February 2015 were for reconnaissance, surveillance, and intelligence, while 79 percent were for transporting personnel and equipment."¹¹ A DOD program manager stated that "he was not completely satisfied and had asked [DEA] Aviation Division officials to fly more surveillance flights,"¹² but it appears this never occurred.¹³

To help us better understand the causes of DEA's mismanagement and ensure that future projects have adequate oversight, please answer the following:

1. The DOJ-OIG audit was initiated as a result of a whistleblower allegation that was referred from the Office of Special Counsel. Did DEA at any time receive complaints regarding its misuse of DOD funding for aircraft operations in Afghanistan?

⁴ Id. at 6.

⁵ Id. at 17-18.

⁶ Id. at ii.

⁷ Id. at 18.

⁸ Id. at 35.

⁹ Id. at 33.

¹⁰ Id. For instance, during the second quarter of 2014, DEA "over-reported the number of missions flown by 46," ...and "under-reported the number of mission requests it declined by 70 percent for that same quarter."

¹¹ Id. at iii.

¹² Id. at 30.

¹³ Id. at 32-33.

- a. Has DEA received any other whistleblower complaints regarding the ATR 500, counternarcotics operations in Afghanistan, or other subjects addressed by the DOJ-OIG audit?
 - b. Please detail each such complaint and what actions DEA took to investigate or otherwise substantiate such complaints.
2. Independent of the DOJ-OIG audit and the responses DEA provided, has DEA taken any action to assess its portion of the \$86 million expenditure over seven years for this project?
 - a. If not, why not?
 - b. If so, what have been the results of that assessment? Please provide a copy.
3. The DOJ-OIG audit found three separate violations of the FAR in its procurement of the ATR 500. We understand that DEA has taken positive steps to ensure the proper oversight of its acquisitions by improving policy and procedures since 2008. However, DEA has not yet created and implemented an updated Standard Operating Acquisition Procedure. In addition, the DOJ-OIG identified three separate significant violations of the FAR in one acquisition, which suggests systemic problems in DEA's acquisition management process.
 - a. When will the updated Standard Operating Acquisition Procedure be completed and implemented?
 - b. Has DEA assessed whether its new policies and procedures would prevent future violations of the FAR, including those specifically identified by the DOJ-OIG?
 - c. What steps has DEA taken to identify the deficiencies that led to the specific violations of the FAR identified by the DOJ-OIG?
 - d. What steps has DEA taken to assess systemic deficiencies in its acquisition process and adherence to the FAR more generally? What have been the results of any assessment?
4. The delay in the ATR 500 modifications and the fact that it flew no missions in Afghanistan, coupled with the routine unavailability of DEA's surveillance aircraft in Afghanistan undoubtedly hurt DEA's counternarcotics efforts in country. This was compounded by DEA's failure to establish any goals, objectives, or other measurable performance metrics to determine the success of the MOUs with DOD.
 - a. When did DEA management become aware its surveillance aircraft in Afghanistan was highly unavailable?
 - b. Why did the shortage of aircraft persist throughout the mission, and why did DEA not take action to mitigate, such as by ensuring a substitute aircraft was available?
 - c. Has DEA assessed the impact of its lack of aviation support on Afghan counternarcotics operations?
5. DEA has reported establishing procedures to ensure programmatic data provided to DOD is accurate. However, it is not clear that the causes for inaccurate reporting have been fully addressed. From the third quarter of fiscal year 2012 and the first quarter of fiscal year 2014, DEA consistently over-reported the number of missions declined and under

reported the number of missions flown.¹⁴ For the next two quarters, DEA did the reverse. It seems unlikely that DEA's explanation of "typos or transpositions" could explain such systematic inaccurate reporting.

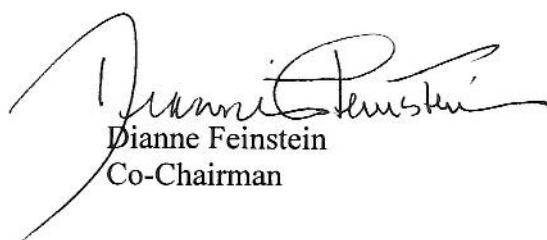
- a. What controls were in place to ensure the accuracy of programmatic reporting?
 - b. Who was responsible for ensuring that they were accurately recorded and maintained and what checks were place to confirm accuracy?
 - c. Why did these controls fail?
6. The DOJ-OIG reported that, in April 2014, the Federal Aviation Administration determined the ATR 500 was not flightworthy due to improper modifications made by a DOD subcontractor (specifically, drilling oblong holes when it is common knowledge that rivets cannot be properly placed in such holes). The estimated cost to correct the problem was \$6 million.
- a. Given that the DOJ-OIG found that a serviceable plane could have been acquired for approximately \$5.2 million, did DEA consider whether such corrections were advisable?
 - b. What efforts did DEA make to recoup these funds from the subcontractor?
 - c. What internal controls has DEA instituted to ensure such costly errors are not made in the future?
7. The DOJ-OIG recommended that the Aviation Division establish procedures on how it oversees and verifies contractor performance to ensure that contractors provide adequate support for the charges billed and that DEA review documentation prior to paying invoices.
- a. What efforts has DEA taken to ensure that all of its components apply these fundamental concepts?

Thank you for your attention to this matter. With the many challenges facing counternarcotics efforts in Afghanistan, it is our goal to ensure the most effective use of United States funding and resources in country.

We would appreciate your response by June 10, 2016. Should you have any questions, please do not hesitate to contact us or have your staff contact Janet Drew of Senator Grassley's office at (202) 224-5225 or Kelly Lieupo of Senator Feinstein's office at (202) 228-3081.

Sincerely,


Charles E. Grassley
Chairman


Dianne Feinstein
Co-Chairman

¹⁴ Quarter three of FY12 and quarter one of FY12 were apparently accurately reported. DOJ-OIG report at 34.