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December 20, 2020

The Honorable Adam Smith
Chairman, HASC
2216 Rayburn House Office Building
Washington, D.C. 20515

Subject: NDAA for FY 2021 and Unfinished Oversight and Legislation

Dear Chairman Smith:

Last week, I sent you a letter recommending legislation on Program/Project Management (P/PM) that would restore a provision in your NDAA markup that was receded, per the Conference Report. That was the last of five letters to you, since December 2019, regarding oversight and legislation that will result in lower defense acquisition costs and reduced fraud, waste, and abuse.

This letter includes a recap of the previous correspondence and actions that I hope you will consider for oversight and acquisition reform.

Big Picture

DFARS and DOD acquisition policies and procedures provide false assurance that a contractor's Earned Value Management System (EVMS), used for P/PM, provide accurate and reliable data. Loopholes and omissions in the so-called Voluntary Consensus Standard, EIA-748, enable a contractor to be assessed as compliant with the EVMS guidelines even if it submits Integrated Program Management Reports that understate true cost overruns and behind schedule conditions.

The DOD EVMS Implementation Guide (EVMSIG), Guideline 22, asserts that reported cost and schedule variances, generated from the EVMS, "provide early insight into cost and schedule status for improved visibility of program performance." That assertion is wrong. In fact, the EIA-748 guidelines, required by DFARS, enable contractors to submit performance reports that hide the truth and postpone knowledge of the magnitude of cost overruns and behind schedule conditions.

NDIA and CODSIA have corroborated that contractors submit misleading performance reports in documents that are cited in my white paper. Excerpts follow:

Excerpt from NDIA letter and attached position paper, "Award Fee Incentive Provisions Using EVM Reporting:"

Defense contracts have misused these incentives (to achieve program contractual outcomes) by tying achievement of certain EVM cost and schedule metrics to

award and incentive fees and thereby sacrificing objective program status reporting in favor of “making the number.”...A greater risk posed by the use of these monthly incentives is that they can provide the wrong focus (i.e., management of data and reports). Managing a program using these data outcomes could cause contractors to ...taking other actions that might be less than optimal in order to maintain high ratios between budgeted cost and schedule and actuals... project managers will not receive reliable information on contract status throughout most of the Program.”

Excerpt from CODSIA letter to DOD, “Ref: DOD Report to Congress on Implementation of EVM: Request for Industry Input, July 2, 2009.”

“In addition, inappropriate contractual incentives, such as focus on incentivizing or penalizing contractors based on performance data, promote poor behavior in the establishment of program baselines and EVMS implementations.”

The recent utilization of Agile Methods has provided contractors with increased opportunities and incentives to submit unreliable information, “make the number,” and receive undeserved award fees.

The status quo is a toxic triad of EIA-748, Agile methods, and subjective award fees. In concert, they enable, not deter, fraud, waste, and abuse. My recommendations are intended to improve transparency and accountability of Major Capability Acquisitions and to reduce the cost of EMD programs that use EVM.

Recap of Previous Letters

Dec. 19, 2019: Request for Defense Acquisition Reform and GAO Investigation

It is recommended that you:

Consider oversight actions and legislation that can lead to reduced acquisition costs and early warning of potential cost and schedule overruns, DOD-wide.

1. Request GAO to verify my assertions that:

- a. The provisions of PMIAA are not substantially similar to or duplicative of...policy, guidance, or instruction of DOD related to program management.
- b. EIA-748 is no longer a VCS per PMIAA and OMB criteria. It is Ineffective, impractical, and obsolete.

2. After GAO verifies my assertions, initiate legislation to make PMIAA applicable to DOD, with no waiver

Feb. 16, 2020 Subj: Award/Incentive Fees for Software Deliveries Using Agile Methods

There are two recommendations:

1. DOD should consider a revision to DOD Instruction 5000.02I, “Operation of the Adaptive Acquisition Framework,” that would add award/incentive fee criteria that are dependent on

- a. Achieving the goals and features of each software iteration and increment in the Product Roadmap on a timely basis and
 - b. Reducing the total open deficiencies in the Technical Debt, especially Type I or critical deficiencies.
2. The Armed Services Committees should include a provision in the NDAA for FY 21 for DOD to perform two reviews regarding the use of Agile Methods and to submit respective reports to the Committees.

May 12, 2020 Subj: Request for Supplemental GAO Investigation, F-35 Modernization

The F-35 continues to miss its schedule targets and grow in cost. It is time to examine whether Lockheed Martin's reporting of Block 4 cost and schedule performance to DOD and to Congress is credible and accurate.

Request the GAO to determine if the F-35 EVM Contract Performance Reports (CPR) include behind schedule conditions that are consistent with DOT&E assessments. If the CPRs are inconsistent, the GAO should examine Lockheed Martin's Earned Value Management (EVM) processes to determine why the reports are inaccurate. It was also recommended that GAO examine the DCMA's EVM compliance surveillance reports to determine if DCMA has detected and reported inconsistencies between the reported earned value and actual technical performance achieved.

Oct. 6, 2020 Request for Supplemental GAO Investigation, F-35 Modernization

It is recommended that you request GAO to expand the scope of the report requested in HR 6395 EH Sec. 1710N, Report on Agile Program and Project Management (Agile P/PM). Report on Agile P/PM, to include "other information" that includes:

1. An assessment of the effectiveness and use of incentive and award fees when Agile P/PM is used to acquire software that is embedded in weapon systems and other military-unique hardware systems.
2. An assessment of the extent to which DOD completed actions that were recommended in the Feb. 16 letter.

Dec. 12, 2020 Subject: NDAA Excludes Your Most Game-Changing Provision for Program and Project Management

Present a new bill to reintroduce the NDAA provision that was rejected by the Senate. As stated in the white paper, passage of the bill will be a first step to reduce costs by reducing the regulatory burden. The number of EVMS guidelines requiring DCMA review would decrease from 32 to 20. The twelve, unnecessary guidelines are included in EIA-748 but not in the standards that are accredited by ANSI, those of the Project Management Institute. Also, the recommended tailoring of four, retained guidelines would provide an early warning of deviations from plans and allow DOD to buy a product that works, not a statement of work.

The white paper and all letters may be downloaded from www.pb-ev.com at the "Acquisition Reform" tab. Please contact me for additional information or support.

Yours truly,

A handwritten signature in blue ink that reads "Paul J. Solomon". The signature is written in a cursive style and is placed on a light pink rectangular background.

Paul J. Solomon

CC:

Sen. Joni Ernst, SASC

Sen. Kamala Harris, HSGAC

Mr. Andrew Hunter, Biden-Harris Transition Team