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July 11, 2021

The Honorable Bernie Sanders  
Chairman, Senate Budget Committee  
624 Dirksen Senate Office Building  
Washington, DC 20510

Subject: Legislation to Reduce Acquisition Costs and Related Fraud, Waste, and Abuse

Dear Sen. Sanders:

This is a follow-up to earlier letters to “Reduce the Military Budget and Related Fraud, Waste, and Abuse.” I am broadening the scope to cover capital acquisitions by all civilian agencies. We need acquisition reform to fix OMB policy, FAR, and DFARS.

### **Proposed Legislation**

First, please introduce legislation to reform Program/Project Management (P/PM). The House attempted to do that last year when Rep. Speier introduced HR 6395, Sec. 1745, *Requirements Relating to P/PM*. It was included in the FY 2021 NDAA mark up. However, that provision was receded, per the Conference Report. I have asked her to reintroduce it in the NDAA for FY 2022. I hope that you also introduce it in the Senate version to improve its chance of passage. Also, please consider obtaining co-sponsorship by Senators Ernst (bipartisan support) and/or Warren (SASC). Sen. Ernst is the sponsor of the Project Management Improvement Accountability Act of 2016 (PMIAA). This provision would amend the PMIAA. The provision is in the first letter to Rep. Speier, in Appendix A, *Excerpts from Pertinent Letters to Others*.

Second, please consider contacting Sen. Ernst to express your support and/or co-sponsorship of my recommendation to fix the PMIAA by making it applicable to DoD. See excerpts from my letter to her, subj: *Proposed NDAA Markups to Fix the PMIAA; Delete “shall not apply to DoD,”* dated 7/7/21.

### **GAO Cites PMI Standards**

The proposed legislation is consistent with GAO recommendations. *GAO-20-44 Improving Program Management*, cites PMI documents, including *PMBOK® Guide*, as:

- **Widely accepted standards** for P/PM
- Utilized worldwide
- Generally recognized as **leading practices** for P/PM
- **Approved by the American National Standards Institute** (ANSI).

Per the GAO report:

“OMB staff told us they decided (not) to adopt an existing set of consensus-based standards, such as the widely accepted standards for P/PM from the PMI. PMI is a not-for-profit association that provides global standards for, among other things, P/PM. The PMI standards are utilized worldwide and provide guidance on how to manage various aspects of projects, programs, and portfolios and are approved by ANSI.

PMI's Standard for Program Management provides information detailing when a specific standard should be utilized in different ways during the life cycle of a program. For example, in the beginning of a program, risk management should be planned and an initial risk assessment created. Later, during program implementation, risk management tasks focus on monitoring, analyzing risk, and responding to risk. If the standards had the additional detail, it would be possible to determine if agencies are meeting them and properly applying them to programs and projects."

### **Why Your Actions Will Trigger Acquisition Reform**

The end game is to revise OMB Policy, FAR, and DFARS and replace the sham, discredited EVM standard, EIA-748, with the PMI standards for P/PM. Per my letter to Sen. Ernst,

There is a **false claim** in the DoD EVM System Interpretation Guide (EVMSIG). EVMSIG alleges that, when EVMS is implemented in a disciplined manner consistent with the 32 Guidelines contained in EIA-748, "Government and industry program managers use EVM as a program management tool to provide joint situational awareness of program status and to assess the cost, schedule, and technical performance of programs for proactive course correction."

The provision in HR 6395, Sec. 1745 pertains to OMB personnel policy, not capital asset policy. However, if your legislation is passed, future program managers (PM) will demand that contractors submit performance reports that provide joint situational awareness of program status and enable them to assess the cost, schedule, and technical performance of programs for proactive course correction. Current OMB policy (OMB Circular No. A-11, Capital Programming Guide), FAR, and DFARS fail to require contractors to provide PMs with the information that they need.

As stated in my previous letter, "Please let me know how I can help you to succeed."

All cited letters may be downloaded from [www.pb-ev.com](http://www.pb-ev.com) at the "Acquisition Reform" tab.

Yours truly,



Paul J. Solomon

CC:

Sen. Joni Ernst, SASC

Sen. Elizabeth Warren, SASC

Chairman Adam Smith, HASC

Rep. Jackie Speier, HASC

OMB Acting Director Robert Fairweather

Dep. Sec. of Defense Kathleen Hicks

Acting Undersec. of Defense Stacy Cummings

Michael LaForgia, NYT

Anthony Capaccio, Bloomberg News

<b>Attachment A, Excerpts from Pertinent Letters to Others</b>			
<b>To</b>	<b>Subject</b>	<b>Date</b>	<b>Excerpts</b>
Rep. Norcross	Today's F-35 Hearing, Deceptive (or No) Performance Metrics, and Ponzi Schemes	4/22/21	<p>A DOD cost plus award fee "Major Capability Acquisition" and many software acquisitions, especially those using "Agile Methods," are akin to a <b>Ponzi scheme</b>. A contractor may submit a monthly Integrated Performance Management Report or a periodic software release that <b>purports</b> to have increased functionality or technical performance. However, the acquisition regulations enable the contractor to <b>deceive</b> the DOD Program Manager about the <b>true cost, schedule, and technical performance</b>.</p> <p>It is time to hold DOD program managers and contractors accountable for <b>delivering products that work</b>. We need to require <b>accountability and transparency in the program measurement and reporting processes</b>. We need to <b>reduce fraud, waste, and abuse</b> and make <b>better use of DOD budgets</b>.</p>
Rep. Norcross	More on Deceptive Performance Metrics and Ponzi Schemes	4/25/21	<p>DFARS requires that contractors use an industry standard for P/PM called EIA-748, Earned Value Management Systems...I have been advocating the replacement of EIA-748 (owned by the NDIA and not accredited by the American National Standards Institute (ANSI) with P/PM standards that are owned by the Project Management Institute (PMI) and are ANSI-accredited. The PMI standards focus on the product, not the work.</p> <p>Lockheed "used Management Reserve (MR) funds to alter its own and subcontractor performance levels and cost overruns." ...DCMA ultimately concluded that LM "failed to demonstrate proper use of the MR budget . . . and misapplied MR budgets . . . solely for the purpose of keeping the cost performance index (CPI) from worsening."</p> <p><b>Deceptive MR Practices are Systemic and Pervasive in DOD Contracts</b></p> <p>I observed these corporate malpractices on other programs, including B-2 and Global Hawk. If you authorize GAO to assess the F-35 program and similar development programs, I am confident that it will find current examples of MR being used for rework, additional drawings etc. and verify that the true cost overruns are hidden.</p>
Sen. Warren	Lowering Defense Costs and Initiating Acquisition Reforms	5/18/21	<p>Cites Email to HASC/SASC, dated 11/5/10. Most commercial companies use the PMI standard, Guide to the Project Management Body of Knowledge (PMBOK® Guide), not EIA-748.</p> <p>Please consider supporting my recommendations to Chairman Smith and co-sponsoring bipartisan legislation with Senators Ernst and Sanders. GAO should also be requested to investigate my allegations.</p>
Counselor to the President Jeff Zients	Acquisition Reforms to Reduce	6/1/21	<p>My plan will not only address your question to Ms. Hicks but will also cover the following issues:</p> <ul style="list-style-type: none"> <li>• Unjustified Award Fees</li> </ul>

	Defense Costs		<ul style="list-style-type: none"> <li>Contractors “manage data” in order to “make the number”</li> <li>Contractors “keep Earned Value Management (EVM) metrics favorable and problems hidden.”</li> <li>Replace NDIA-owned EVM standard EIA-748 with the ANSI-accredited PMI P/PM standard and PMBOK® Guide</li> <li>Fraud, waste, and abuse</li> <li>Status quo is barrier to entry to potential contractors not in the military/industrial complex</li> </ul> <p>Implementation of my recommendations will lead to lower defense costs by:</p> <ul style="list-style-type: none"> <li>Providing earlier detection of cost overruns and identification of feasible corrective actions.</li> <li>Providing earlier detection and reporting of Nunn-McCurdy breaches and higher Estimates at Completion (EAC). Enable earlier termination of “rathole” (per Chairman Smith) programs to curtail needless spending</li> <li>Program managers manage development and testing of the product instead of “managing the numbers,” wasting time on analyzing MR burndown, preparing false variance analysis reports, and false rationale for low EACs. .</li> <li>Developing realistic performance measurement baselines, execution plans, and valid cost/schedule performance reports; again providing earlier detection and reporting of real variances and faster corrective actions</li> <li>Plan for rework</li> <li>Reduce use of MR as a slush fund to mask cost overruns</li> </ul>
Adam Smith	DOD’s Failure to Perform	6/4/21	The DFARS requirement for contractors to comply with EVM Standard EIA-748 makes the use of technical performance measures (TPM) optional, not mandatory. Because contractors are not required to relate cost, schedule, and technical accomplishments, they don’t. The NDIA has consistently rejected recommendations to close the loopholes in the EIA-748 guideline regarding TPMs and the technical baseline or product scope. DOD has not fixed the regulations and policies, despite the Adaptive Acquisition Framework. Contractors continue to get their costs reimbursed and to earn award fees just for showing up to work and using DOD-mandated procedures, regardless of poor technical outcomes and failure to deliver products that will work. The costs of administering EVM, both contractor costs and oversight costs, are wasted because the EVM reports mask situational awareness of program execution, as discussed in the PARCA letter.
Rep. Jackie Speier	Request to Resubmit (Reintroduce) HR 6395, Sec. 1745, in	7/2/21	DoD does not adhere to the highest standard of transparency and accountability for program and project management. Instead, DoD enables contractors to use an NDIA-owned, sham standard, EIA-748, which enables contractors to provide misleading information regarding a program’s cost, schedule, and technical performance.

	NDA for FY 2022		<p>Defense contractors willfully ignore, not draw on, the best management practices that are used by commercial enterprises, world-wide.</p> <p>Your Unfinished Business: I really appreciate your attempt, last year, to force DoD to adhere to a higher standard. It reminded me of Hebrew National salami. Unfortunately, your markup to the NDA for FY 2021, HR 6395, Sec. 1745, Requirements Relating to P/PM, was receded, per the Conference Report. Please read my letter to Chairman Smith, Subj: NDA Excludes Your Most Game-Changing Provision for Program and Project Management, dated Dec. 12, 2020. I had requested that he again include the provision in the NDA for FY 2022.</p>
Rep. Jackie Speier	Addendum to Request to Resubmit HR 6395, Sec. 1745	7/2/21	<p>It is an unfortunate tribute to the military-industrial complex that <b>problems</b> that I discussed with Chairman Waxman in 2007, with Ike Skelton in 2010, and with Chairman McCain during 2011-2016 (including the DoD Report to Congress required by WSARA) <b>have not been resolved</b>. The resultant legislation that was passed required reports, not effective reform. I hope that you take up the mantle that was left by Sen. McCain</p>
Sen. Ernst	Proposed NDA Markups to Fix the PMIAA; Delete "shall not apply to DoD"	7/7/21	<p>The Senate will soon begin markup of the NDA for FY 2022. This is a second request to fix the PMIAA by making it applicable to DoD. You can do this by deleting the PMIAA provision:</p> <p>2) Application to DoD.  --Paragraph (1) shall not apply to the Department of Defense to the extent that the provisions of that paragraph are substantially similar to or duplicative of—  (A) the provisions of chapter 87 of title 10; or  (B) policy, guidance, or instruction of the Dept. related to program management."</p> <p><b>False Claim</b></p> <p>There is a false claim in the DoD EVM System Interpretation Guide (EVMSIG). EVMSIG alleges that, when EVMS is implemented in a disciplined manner consistent with the 32 Guidelines contained in EIA-748, Government and industry program managers use EVM as a program management tool to provide <i>joint situational awareness of program status</i> and to <i>assess the cost, schedule, and technical performance of programs for proactive course correction.</i>"</p> <p>Reports to Congress by DoD and the Section 809 Advisory Panel <b>refute DoD's allegation.</b></p>