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The Honorable Mac Thornberry  
Chairman, HASC  
2216 Rayburn House Office Building  
Washington, D.C. 20515

Subject: Updated NDAA Defense Acquisition Reform - Earned Value

Dear Chairman Thornberry:

Thanks for your leadership and accomplishments regarding defense acquisition reform. Please consider the recommendations below for your committee's oversight actions and for additional reforms to be included in the NDAA for FY 2019.

I have been advocating reforms for over 20 years and have worked directly with legislators, DoD policy makers, NDIA and GAO to improve acquisition regulations and guidance for cost plus award fee contracts that include the use of the earned value management system (EVMS) by program managers.

- My recommendations to Ike Skelton, in a letter on March 28, 2010, were included in Andrew Hunter's markup of the NDAA for FY 2011.
  - Letter: DFARS EVMS clause 252.234-7002(e) should be revised to require that.. the Government will...assess **that performance measurement to ensure complete coverage of quality or technical performance measures** (TPM) in addition to the statement of work.
  - NDAA Sec. 864: requires DoD to:
    - Review acquisition guidance, including DoD Instruction 5000.02, to consider whether **measures of quality and technical performance should be included in any EVM system.**
    - Submit a report to the Armed Services Committees detailing any changes in the acquisition guidance of the DoD...and any actions taken, or planned to be taken, to implement such changes.
- My recommendations to Buck McKeon, in a letter on Sept. 13, 2011, stated:
  - Neither the program acquisition managers nor the OSD PARCA Office can be assured that a contractor's performance metrics are valid or accurate.
  - Neither the GAO nor any agency has ever validated that a contractor's use of EVM integrates cost, schedule and quality/technical performance or ensures accurate status and EAC.
  - There is an urgent need to transform EVM into a cost-effective acquisition management tool that will provide early warning of performance problems on a consistent basis.
- Former Asst. Sec. Def. (Acquisition) Katrina McFarland funded me to work with NAVAIR and PARCA in 2012 to develop and document an **implementation approach** of integrating EVM reporting with TPMs.
- Worked with Sen. McCain on recommended reforms and F-35 program cost issues.

- Opened GAO Fraudnet case regarding F-35 award fees that were based on false EVM reports. The case evolved into a FCA complaint which included charges of conspiracy and fraudulent inducement. The charge of fraudulent inducement was based on evidence that the contractors intentionally reported an EAC that was lower than the “most likely” EAC because of “affordability considerations.”
  - Currently advocating that DoJ recover damages (estimate \$ 100 M)
  - Believe that recovery of damages will deter future, fraudulent behavior by contractors and lead to regulatory and oversight reforms
- Sent a letter to you on Nov. 17, 2013, Subject: Expanded NDAA Defense Acquisition Reform - Earned Value. The letter provided specific recommendations to reduce acquisition costs and to provide timely, reliable, and verifiable information to program managers.
- Sent an Email to Ms. Ellen Lord regarding these subjects.

### **Reduce Regulations and Costs**

You and I have common goals to reduce regulatory burdens and related costs. At a HASC hearing in October 2013, two speakers provided recommendations that are applicable to the DFARS provisions for EVM.

- Moshe Schwartz stated that repeal or amendment of regulations that no longer provide a benefit could serve to simplify the acquisition process. He recommended removal of unnecessary regulatory burdens on industry that add to the costs of doing business.
- Dov Zakheim stated that requirements must not only be defined but upheld during the development and production process.

In my opinion, their recommendations are applicable to the DFARS regulations, related contract instruments, and DoD policy and guidance for EVM. However, the acquisition reforms that have been implemented in recent years failed to address the issues that I raised with you and your predecessors. Consequently, government program managers continue to:

- Waste a lot of money paying for EVM
- Get unreliable and misleading cost and schedule performance information from contractors.

The issues described in my letter to you in 2013, and recommendations for reductions in regulatory requirements and other changes, are still pertinent.

### **Require Program Managers to Focus on Requirements and Technical Performance When Using EVM**

Since 2004, I have been addressing the fatal flaw in DFARS and the EVMS standard, ANSI-748. Both documents fail to require that contractors integrate technical performance with cost and schedule performance. I explained this in a letter to (then) Pres.-elect Trump in November 2016. My most recent recommendations are in letters to Senators McCain and McCaskill. The letters, and the previous letters to Chairmen Skelton, McKeon, and yourself, may be downloaded from <http://www.pb-ev.com/acquisition-reform.html> .

DoD Instruction 5000.02, Operation of the Defense Acquisition System, states that the program manager will use TPMs and metrics to assess program progress against established plans. However, there are no standard requirements for contractors to link earned value with TPMs.

### **Revise DFARS to Replace ANSI-748 with a Project Management Standard (PMIAA)**

An alternative to implementing the recommendations in my 2013 letter is to abandon the requirement for compliance with ANSI-748. I now recommend that DoD implement the Program Management Improvement and Accountability Act of 2015 (PMIAA) instead of having a waiver. The Act calls for adoption of government-wide (excluding DoD) standards, policies, and guidelines for program and project management for executive agencies. *The Project Management Institute (PMI) Project Management Body of Knowledge (PMBOK Guide)* is the only standard that meets PMIAA criteria.

I proposed the use of *PMBOK Guide* by DoD in a recent letter to OMB Director Mulvaney. The Mulvaney letter and this letter may also be downloaded from the above website.

### **Deter Contractors from Submitting False, Misleading EVM Reports**

Contractors will not be deterred from repeating the types of corporate misbehavior exhibited by Lockheed Martin and Northrop Grumman on the F-35 program unless:

- The government is reimbursed for undeserved award fees and
- HASC and/or SASC take the oversight actions that I recommended to Senators McCain and McCaskill.

Please coordinate with the senators to address this issue.

### **Support to HASC**

I have offered to support the executive, legislative, and judicial branches on acquisition reform and justice for the taxpayers, *pro bono*. Of course, this offer applies to you. Please contact me for help or for additional facts that support my assertions.

Yours truly,



Paul J. Solomon

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