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The Honorable Donald Norcross
Ranking Member, HASC Subcommittee on Tactical Air and Land Forces
2216 Rayburn House Office Building
Washington, D.C. 20515

Subj: Restructure the F-35 Block Four Contract

Dear Ranking Member Norcross:

Previously, I recommended that you markup the NDAA for FY 2026 to provide oversight of the use of outcome-based metrics and technical performance incentives in F-35 contract. Now, I recommend that submit legislation that will result in restructuring of the Lockheed Martin (LM) F-35 BLOCK FOUR CONTRACT (BFC) N00019-23-C-0009. It is a currently cost-plus-incentive-fee, cost-plus-award-fee, cost-plus-fixed-fee contract for continued design maturation and development of Block 4 capabilities in support of the F-35 Lightning II Phase 2.3 Pre-Modernization for the Air Force, Navy, Marine Corps; and non-U.S. DoD participants.

I recommend that the software-intensive components of both the cost-plus-incentive-fee and cost-plus-award-fee statements of work of the contract be severed from that contract and restructured into a set of Middle Tier Acquisition contracts and that the restructured contracts conform with the NDAA for FY 2025, SEC. 804. MIDDLE TIER OF ACQUISITION FOR RAPID PROTOTYPING AND RAPID FIELDING provision. Use that provision to provides a rapid acquisition pathway for a program manager to seek a waiver from the regulatory requirement to use Earned Value Management (EVM).

The provision includes the following:

(4) STREAMLINED PROCEDURES.—The process described in paragraph (1) may provide for any of the following streamlined procedures:

(E) A program manager appointed...may seek an expedited waiver from any regulatory requirement, or in the case of a statutory requirement, a waiver from Congress, that the program manager determines adds cost, schedule, or performance delays with *little or no value* to the management of such program or project.”

My white paper, *Common Sense Project Management: “When you come to a fork in the road...,”* includes multiple reasons why the program manager should determine that the statutory and regulatory requirement for EVM (in compliance with the NDIA EIA-748) adds cost, schedule, or performance delays with little or no value to the management of such program or project.

Also, by breaking the contract up into multiple capabilities or blocks, the program manager and the Lockheed Martin can be held accountable for delivering specified capabilities and will not be able to kick the can down the road by deferring capabilities to another block. The technical capabilities for the new blocks should also include specified reductions of technical debt and Minimum Viable Products. These objectives and metrics should be clearly defined in the program manager’s Systems Engineering Plan with flow-down to LM’s Systems Engineering Management Plan.

This proposed path and the program will fail, as always, if the program manager does not clearly and unambiguously define the capabilities, metrics, and related incentive fee criteria. If LM tries to balks to a change and insists on maintaining the status quo, DoD has leverage. Historically, DoD has sold the farm when paying award fees for subjective assessments of “Excellent” and incentive fees based on so-called “objective” measures that were formulated in favor of the contractor, not the taxpayer. For the F-35 program, all we got in return are hangar queens and a full parking lot. So, negotiate well.

Threaten to utilize those subjective or ineffective criteria to reduce fees unless LM agrees to restructured contracts with fair terms and achievable cost, schedule, and technical objectives.

Next, please expand the missions of DOT&E and the DCMA systems engineers to verify that the reported technical performance used for determination of incentive fees is true, not manipulated.

Finally, authorize GAO to assess the validity of the outcome-based metrics and the fees paid.

Buy a Product that Works, not a SOW.



Yours truly,

Paul J. Solomon

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CC:

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Anthony Capaccio, Bloomberg News

Jon Sindreu, WSJ